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Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**January 10, 2011 5:30 P.M.**

**and AGENDA**

**Room 408 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

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- I. Call to order and roll call.
  - II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
  - III. Consideration of Ethics Complaint No. 01-100115, alleging that the Library Commission, through its representative Secretary Sue Blackman, violated Sunshine Ordinance sections 67.15(a) and 67.34 by failing to allow public comment at a Library Commission meeting, and section 67.12(e) by failing to send a knowledgeable representative to Task Force hearings. The Commission will deliberate regarding staff's recommendations related to the complaint. A staff report will be available at the Commission's office and on its website. (Discussion and possible action.)
  - IV. Consideration of possible amendments to the Campaign Consultant Ordinance ("Ordinance"), San Francisco Campaign and Governmental Conduct Code section 1.500 et seq. The Commission will continue its consideration of proposed amendments that include but are not limited to adding language to permit the Commission and the Board of Supervisors to approve changes to the Ordinance; changing the definitions of "candidate," "measure," "economic consideration," and "vendor;" amending the "prohibitions" section; and amending provisions regarding administrative and civil enforcement and penalties. The draft amendments and a staff memo will be available at the Commission's office and on its website. (Discussion and possible action.)
  - V. Possible retention of the Oakland City Attorney's Office as legal counsel to advise the Ethics Commission on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco, as described in the San Francisco City Attorney's August 27, 2010 memorandum titled "Legal Advice on Matters Concerning the Mayor's Race." (Discussion and possible action.)

VI. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 (a) and (c) and Sunshine Ordinance section 67.10(d) to discuss existing litigation as potential amicus curiae.

Conference with Legal Counsel: Existing litigation as potential amicus curiae in support of respondents

Number of cases: 1

McComish et al. v. Bennett et al., U.S. Supreme Court Docket No. 10-239, cert. granted Nov. 29, 2010

VII. Discussion and vote regarding closed session action and deliberations. (Discussion and possible action.)

Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding existing litigation.

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: existing litigation.

VIII. Minutes of the Commission's regular meeting of December 13, 2010. (Discussion and possible action.)

IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the budget, the investigation and enforcement program, revenues, campaign finance disclosure program, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Discussion.)

X. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

*Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Chris Ruston by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [solfa@sfgov.org](mailto:solfa@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy*

from Mr. Rustom or by printing Chapter 67 of the San Francisco Administrative Code on the Internet,

<http://www.sfgov.org/sunshine/>

If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals who influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfethics.org](http://www.sfethics.org).

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

JAMIEENNE S. STUDLEY  
CHAIRPERSON

SUSAN J. HARRIMAN  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

BENEDICT Y. HUR  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: October 14, 2010

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Richard Mo, Chief Enforcement Officer  
Garrett Chatfield, Legal Analyst/Investigator

Re: Complaint Disposition

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## Introduction

The Ethics Commission has calendared the following case for discussion at its October 18, 2010 meeting.

1. **Complaint No. 01-100115**, was referred to the Ethics Commission by the Sunshine Ordinance Task Force ("Task Force") on January 15, 2010. The referral stated that the Library Commission, through its representative, Secretary Sue Blackman, violated Sunshine Ordinance sections 67.15(a) and 67.34 for willful failure to allow public comment at a Library Commission meeting, and section 67.12(e) for failure to send a knowledgeable representative to Task Force hearings.

## Background

On June 4, 2009, Sue Cauthen ("Complainant") attended a regularly scheduled Library Commission meeting. During general public comment, she was denied the opportunity to speak by the Library Commission President, Jewelle Gomez. On June 23, 2009, Ms. Cauthen filed a complaint with the Task Force against the Library Commission for its refusal to allow public comment. Ms. Cauthen is a member of the Task Force, but recused herself from all Task Force proceedings concerning this matter.

On July 28, 2009, Ms. Cauthen appeared before the Task Force to present her claim. No representative from the Library Commission attended. On August 13, 2009, the Task Force issued an Order of Determination, ordering the Library Commission to appear before the Education, Outreach and Training Committee of the Task Force on September 10, 2009. No representative for the agency appeared at that meeting.

The matter was then sent to the Task Force's Compliance and Amendments Committee on October 13, 2009. No representative from the Library Commission appeared at that meeting.

On December 1, 2009, at a special meeting, the Task Force referred the matter to the Ethics Commission, finding the Library Commission, through its representative, Secretary Sue Blackman, in violation of Sunshine Ordinance sections 67.15(a) and 67.34 for willful failure to allow public comment at a Library Commission meeting, and section 67.21(e) for failure to send a knowledgeable representative to Task Force hearings. Ms. Blackman attended that meeting.

Staff's interviewed Ms. Cauthen, Ms. Blackman and Ms. Gomez. In addition, staff reviewed all materials sent from the Task Force, including a DVD of the June 4, 2009, meeting.

#### Applicable Law

Sunshine Ordinance section 67.15(a) states, in relevant part:

"Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction . . ."

Sunshine Ordinance section 67.15(c) states:

"A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify."

Library Commission By-Laws, Article VII, Section 2, states, in relevant part:

"Each person wishing to speak on an item before the Commission shall be permitted to be heard once for up to three minutes. Each agenda for regular meetings shall provide an opportunity for members of the public to directly address the Commission on items of interest that are within the Commission's jurisdiction."

Sunshine Ordinance section 67.34 states:

"The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission."

Sunshine Ordinance section 67.21(e) states:

“If the custodian [of public records] refuses, fails to comply, or incompletely complies with a request . . . the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. . . . Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person’s request. . . . Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.”

### Facts and Analysis

On June 4, 2009, the Library Commission held a regular meeting. The agenda for that meeting included:

Item 1, Public Comment, This item is to allow members of the public to comment generally on matters within the Commission’s purview as well as to suggest new agenda items for the Library Commission’s consideration;

and

Item 2, Peer Review of Proposed Design for the North Beach Branch Library, Discussion, Presentation and discussion of peer review of proposed design for a new North Beach Branch Library.

During Item 1, a member of the public in support of the North Beach Branch design began to discuss her approval of the design. She spoke for about 20 seconds before the President, Ms. Gomez, asked the speaker to hold her comments until Item 2.

Immediately following that speaker, Ms. Cauthen attempted to speak about a non-design related issue regarding the preservation of historic San Francisco libraries. Ms. Cauthen began her statement to the Commission as follows: “Good Afternoon. I’m Sue Cauthen. I’m talking about North Beach but not about design. I just want you -- I think you all know I had a coalition of groups who are concerned about the present plan, and I passed around --.”

Ms. Cauthen was then interrupted by Ms. Gomez, telling her to hold all North Beach comments until Item 2. Ms. Cauthen attempted to explain that she was not speaking about the design of North Beach. Ms. Gomez continued to raise her voice while asking Ms. Cauthen to sit down. Ms. Cauthen then returned to her seat.

1. *Ms. Gomez’s conduct violated the public testimony requirements of Sunshine Ordinance section 67.15.*



Section 67.15(a) requires that each body include an item on its meeting's agenda for general public comment on matters within the body's jurisdiction. Each body is given latitude as to how to administer and comply with such public comment requirements. (Section 67.15(c).)

Library Commission By-law, Article VII, section 2, states that "each person wishing to speak on an item before the Commission shall be permitted to be heard once for up to three minutes. Each agenda for regular meetings shall provide an opportunity for members of the public to directly address the Commission on items of interest that are within the Commission's jurisdiction."

A public body may limit public comment uniformly to facilitate the administration of the meeting.<sup>1</sup> (Section 67.7(c).) The language in Agenda Item 1 was broad and allowed for comments on any matter within the Commission's jurisdiction. It contained no language restricting comment only to those matters that do not appear on the agenda. Item 2 specifically stated that the discussion concerned the proposed design for the new North Beach Branch.

Ms. Gomez informed staff that the North Beach Branch design was of great community interest and there were more members of the public attending that meeting than usual. She stated that she informed the public that North Beach items should only be addressed during Item 2. The DVD of the meeting shows that Ms. Gomez asked another member of the public to sit down when it became clear the speaker's comments addressed the design of the North Beach branch. Ms. Gomez also told staff that prior to this incident, she believed that all comments, however remotely related to an agenda item, had to be held until that agenda item was called.

Ms. Cauthen is part of a coalition concerned with the historic preservation of library branches, including North Beach. During her interview with staff, she stated that she planned to use her general public comment time to address only the preservation efforts of her coalition. She further stated that given the way Item 2 was worded, she believed that she would only be able to comment on the design of the North Beach Branch during that item.

Although Ms. Gomez was within the law to limit public comment, Ms. Cauthen began by clearly stating that she was not speaking to the design of the North Beach branch. As soon as Ms. Gomez heard that Ms. Cauthen was part of a coalition concerned about the present plan, Ms. Gomez told Ms. Cauthen to stop speaking. Ms. Cauthen reiterated that she did not intend to speak to the design of the North Beach branch. The actual substance of Ms. Cauthen's comment was never expressed, yet Ms. Gomez repeatedly, and with increasing force, told Ms. Cauthen to sit down. Ms. Cauthen subsequently stated that she would not continue with her intended comment out of a concern she would "provoke the Chair."

Given the broad language included in agenda Item 1, staff finds that Ms. Gomez violated section 67.15 by denying Ms. Cauthen the right to make general public comment on a matter within the Commission's jurisdiction.

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<sup>1</sup> The next Library Commission's meeting agenda was re-worded in the general public comment item to include matters "within the subject matter jurisdiction of the Commission and that do not appear on the agenda." (June 18, 2009, Library Commission Meeting Agenda, Item 1.)

2. *Section 67.34 is not applicable to Ms. Blackman because she is not an elected official, department head or managerial city employee, and her conduct was not at issue.*

Section 67.34 states that it is official misconduct for the failure of any “elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance.” The Task Force’s August 13, 2009 Order of Determination (“Order”) finds that the “agency” willfully violated section 67.15(a) and did not refer to a specific individual. The Task Force’s January 15, 2010 referral to the Ethics Commission states that the Order was against the Library Commission, through its representative, Secretary Ms. Blackman.

Section 67.34 is unenforceable against an agency, as the determination of official misconduct is limited to the conduct of individuals. (S.F. Charter § 15.105(e) [official misconduct is wrongful behavior by a public official].) Although the referral names Ms. Blackman as the Library Commission representative, Ms. Blackman is not an elected official, department head or managerial city employee. Moreover, Ms. Blackman’s conduct was not at issue. Thus, section 67.34 is not applicable to Ms. Blackman.

3. *Section 67.34 is not enforceable against Ms. Gomez because she is not an elected official, department head or managerial city employee; however, staff believes that her conduct falls below the standard of decency, good faith and right action impliedly required of all public officials.*

Ms. Gomez, by denying Ms. Cauthen the right to make public comment, willfully failed to comply with 67.15. However, because Ms. Gomez is not an elected official, department head or managerial city employee, her actions do not implicate section 67.34. Nonetheless, staff believes that her conduct falls below the standard of decency, good faith and right action impliedly required of all public officials.

Assuming, arguendo, that section 67.34 applied in this instance, the Ethics Commission still lacks any enforcement authority over her violation of section 67.15. Section 67.34 is not incorporated into any of the Ethics Commission’s penalty provisions. While one recourse is to initiate the discipline, suspension, and removal process, members of the Library Commission are not listed as individuals subject to removal under S.F. Charter section 15.105. However, Charter section 8.102 provides that Library Commission members may be removed by the Mayor.

Thus, staff recommends referring the matter to the Mayor, Ms. Gomez’s appointing authority, so he may determine what action, if any, to take against Ms. Gomez. At the same time, staff recommends that the referral letter to the Mayor indicate the Commission’s belief that Ms. Gomez’s actions fell below the standards appropriate for a public official.

4. *Section 67.21(e) is not applicable.*

Although no representative from the Library Commission attended any meeting on this matter until the meeting on December 1, 2009, section 67.21(e) only mandates that the custodian of public records attend any hearing to explain why a document was withheld. Here, the issue was

the ability of an individual to make public comment, not the withholding of public records. Thus, section 67.21(e) is not applicable in this instance.

#### Recommendation

For the reasons stated above, staff recommends that the Commission consider taking the following actions:

- 1) Dismiss the alleged violations of Sunshine Ordinance sections 67.15(a), 67.21(e) and 67.34 against the Library Commission, through its representative, Ms. Blackman; and
- 2) Refer the matter of Ms. Gomez's alleged violation of Sunshine Ordinance section 67.15 to her appointing authority, the Mayor, so that he may determine what action, if any, he should take against Ms. Gomez.



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

JAMIEENNE S. STUDLEY  
CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

BENEDICT Y. HUR  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: January 6, 2011

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Mabel Ng, Deputy Executive Director

Re: Proposed Amendments to the Campaign Consultant Ordinance

At its December 13, 2010 meeting, the Ethics Commission approved several proposed amendments to the Campaign Consultant Ordinance (the "Ordinance"), San Francisco Campaign and Governmental Conduct Code ("C&GC Code") section 1.500 et seq. The Commission approved the following: adopting an electronic filing system for reporting by campaign consultants; requiring consultants to disclose information on a monthly basis; changing the economic threshold for qualification as a campaign consultant; modifying the registration fees; and eliminating the client fees. The Commission also approved a proposal that the amendments take effect on January 1, 2013, unless the Commission adopts a resolution to delay their implementation.

At the January 10, 2011 meeting, the Commission will consider five outstanding decision points: 2, 3b, 3c, 7 and 10. Staff has revised the draft legislation to reflect the Commission's actions at its last meeting. (*Italic single-underline text reflects provisions approved by the Commission; double-underline text reflects provisions approved by the Commission that differ from staff's recommendations.*) The draft legislation also identifies, in grey highlighting, the staff's proposals with respect to the outstanding decision points. Staff also proposes that the Commission consider one additional decision point to cover approval of minor edits that appear in the draft amendments but that were not set out separately for the Commission's consideration – continuing the numbering of decision points from the earlier memo, this would be Decision Point 17 in this memo.

## Discussion and Decision Points

One decision point (Decision Point 2) is substantive; the remaining decision points are technical in nature.

### 2. Section 1.505. Amendment or Repeal of Chapter.

Staff proposes that the Ordinance be amended so that, in addition to changes made by voters, the Ethics Commission and the Board of Supervisors may make changes to the

Ordinance. The proposed language tracks language that appears in the Campaign Finance Reform Ordinance ("CFRO"), C&GC Code § 1.103, and the Government Ethics Ordinance ("GEO"), C&GC Code § 3.204. The proposal would allow the Board of Supervisors ("Board") to amend the Ordinance, subject to certain conditions: the amendment must further the purposes of the Ordinance, 4/5 of the Ethics Commission would have to approve the amendment, the proposed amendment is available for public review for at least 30 days prior to any action by the Board, and the Board approves the amendment by at least a 2/3 vote of all its members.

Staff's proposal mirror those that were presented to and approved by the voters in the CFRO (section 2.112 of Proposition O in the November 7, 2000 election, now C&GC Code section 1.103) and the GEO (section C9.106 of Proposition E in the November 4, 2003 election, now C&GC Code section 3.204).

At the December meeting, Commissioners expressed concern that the proposal may be looked upon as allowing the Commission and the Board to amend the law without the voters' participation. Under staff's proposal, the voters continue to have the authority to modify the Ordinance. For example, the voters most recently took action to amend the CFRO in the June 2008 election; Proposition H amended CFRO section 1.126 to address further campaign contributions made by prospective City contractors. In addition, members of the public continue to have the ability to make public comment when the Commission or the Board considers proposed amendments.

As you know, the Commission reviews on at least an annual basis—if not more—various provisions of the CFRO and GEO to fine tune them to carry out their public purposes. CFRO section 1.103 and GEO section 3.204 enable the Commission and the Board to make changes on a more timely basis than having to place the proposed changes on the ballot. For example, CFRO section 1.103 has allowed the Commission to move towards greater electronic filing of campaign finance statements and to streamline the City's public financing program. And GEO section 3.204 has enabled the Commission and the Board to approve changes related to gifts, officers' contracting with the City, compensated advocacy, and post-employment restrictions. By allowing for the Commission and the Board to make changes without returning to the ballot, these sections in the CFRO and GEO provide for a more efficient means of enacting changes that are necessary to respond to changing conditions. Staff's proposal here in the Campaign Consultant Ordinance would enable the Commission and the Board to consider possible changes to the Ordinance for the same reasons.

**Decision Point 2:**

Shall the Commission approve new section 1.505, as set forth on page 2 lines 8-18 of the draft amendments?

**3. Section 1.510. Definitions.**

The following appeared in staff's December 3, 2010 memo, which was considered by the Commission at its December 13, 2010 meeting:

b. *"Candidate," "City elective office," and "measure"*: Staff has revised the definitions of "candidate" and "measure" so that they refer to the definitions of the same terms in the CFRO. Staff has also added the term "City elective office" to replace the term "local office," again referencing the definition in the CFRO. In the CFRO,

- "Candidate" is defined as set forth in the California Political Reform Act, California Government Code section 81000, et seq., but shall include only candidates for City elective office;
- "City elective office" means the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, Member of the Board of Education of the San Francisco Unified School District and Member of the Governing Board of the San Francisco Community College District. The Board of Supervisors consists of eleven separate City elective offices, the San Francisco Community College District consists of seven separate City elective offices, and the Board of Education of the San Francisco Unified School District consists of seven separate City elective offices; and
- "Measure" means any City, San Francisco Unified School District or San Francisco Community College District referendum, recall or ballot proposition, whether or not it qualifies for the ballot.

At the December meeting, Commissioner Hansen raised an issue regarding the proposed change to the definition of "candidate." In reviewing the existing and proposed definitions of "candidate," staff now proposes that "candidate" remain basically unchanged from its current definition, except for clarifying language that is set forth in the draft amendment on page 3, lines 20-24. Under the proposed definition, a person or entity who manages the campaign of a current City elective officeholder running for state elective office would be required to register and submit disclosure statements as a campaign consultant. This is consistent with staff's current application of this definition. Because of this change, Decision Point 3b now contains three subparts.

**Decision Point 3b:**

- (1) Shall the Commission approve the changes to the definition of "candidate" in section 1.510(e) as set forth on page 3, lines 20-24 of the draft amendments?
- (2) Shall the Commission approve adding the term "City elective office" in section 1.510(f) as set forth on page 3, line 25 of the draft amendments (and deleting "Local office" on page 4, line 8-11)?
- (3) Shall the Commission approve the changes to the definition of "measure" in section 1.510(h), as set forth on page 4, lines 12-13 of the draft amendments?

The following two paragraphs also appeared in the December 3, 2010 memo:

c. *"Economic consideration" and "vendor"*: Staff has made clarifying changes to these terms. Payment that campaign consultants receive from their clients to reimburse them for expenses incurred in providing campaign consultant services (such as parking fees, and copying and postage costs) are currently deemed economic consideration. However, money that campaign consultants pay directly to their clients' vendors for



expenses incurred by their clients (such as funds paid to a printer by a campaign consultant that are subsequently reimbursed by the client) are not economic consideration. See Sutton Advice Letter dated November 5, 2001. The changes in the definition of “economic consideration” conform to the distinctions in the advice letter.

Staff has stricken language that excludes attorneys, accountants and treasurers from the definition of “vendor.” The exclusion of these categories of persons may serve a purpose under current law, which requires consultants to report economic consideration that vendors or sub-vendors provide or promise to them. However, as discussed below, staff proposes to eliminate this particular disclosure provision, so that the term “vendor” appears in the Ordinance only in the definitions of “economic consideration” under section 1.510(g) (discussed in previous paragraph) and “campaign management” under section 1.510(c). “Campaign management” includes selecting a vendor of goods or services for a campaign – staff does not believe that there is a distinction between selecting a printer and an attorney, and that an individual or entity that selects or recommends either may be deemed a consultant if the individual or entity otherwise meets the consultant qualifications.

At the December meeting, the Commission did not approve staff’s proposal to delete current section 1.515(e)(6). Accordingly, consultants must continue to report “economic consideration promised to or received by the campaign consultant during the reporting period from vendors and subvendors who provided campaign-related goods or services to a current client of the campaign consultant.” See § 1.515(b)(6) on page 7, lines 8-10. Because the term “vendor” appears in the Ordinance, staff recommends that it not be deleted from the definitions section. However, staff continues to recommend that the term not exclude attorneys, accountants, pollsters or treasurers, as is reflected in the strike-through text that appears on page 4, lines 16-19.

**Decision Point 3c:**

Shall the Commission approve the changes to the definition of “economic consideration” and “vendor in sections 1.510(g) and (i), as set forth on page 4, lines 1-4 and lines 14-19 of the draft amendments?

At its December meeting, the Commission also set aside Decision Points 7 and 10 for further discussion. These decision points are reprinted below, except that staff has added in section 10, under the first bullet, clarification that a consultant who submits a late report would remain subject to a \$50 per day late fee until the report is submitted.

**7. Section 1.525. Prohibitions.**

New section 1.525 restates the general rule under current section 1.510 that it is unlawful for any campaign consultant to provide campaign consultant services, or to accept any economic consideration for the provision of campaign consultant services, without first registering with the Ethics Commission and complying with reporting requirements.



Staff has also added an “evasion of obligations” subsection to state that no campaign consultant may evade the obligations imposed by the Ordinance through the use of agents, associates or employees. Such language also appears in the Lobbyist Ordinance.

**Decision Point 7:**

Shall the Commission approve changes related to prohibitions and evasion of obligations, as set forth in new section 1.525 on page 11 lines 12-18 of the draft amendments?

**10. Section 1.540. Administrative and Civil Enforcement, and Penalties.**

New section 1.540 replaces current section 1.525. Staff has included a title for each subsection. In general, the subsections track existing law, except for minor clarifications or linguistic changes, plus the following more substantive changes:

- In subsection 1.540(a), staff has deleted the \$100 per day late fine for reports that should have been submitted within 30 days of an election. Consultants would still be subject to the \$50 per day late fee for late filings;
- In subsection 1.540(c), staff has replaced “substantial evidence” with “a preponderance of the evidence,” as the latter accurately reflects the standard of proof used by the Commission in its regulations governing investigations and enforcement proceedings;
- In subsection 1.540(c), staff has added the words “intentionally or negligently,” to make clear that a violation may be intentional or negligent;
- In subsection 1.540(c), staff has deleted language that allows the Commission to cancel for up to one year the registration of any campaign consultant who has violated the registration or reporting requirements of the Ordinance;
- In subsection 1.540(c), staff has added the issuance of warning letters as a remedy for the violation or potential violation of the Ordinance;
- In subsection 1.540(e), staff has added language providing for joint and several liability;
- Staff has deleted current section 1.525(e) (“Any person or entity which intentionally or negligently violates Section 1.510 is guilty of a misdemeanor.”);
- In subsection 1.540(f), staff has added language to clarify that an administrative action is commenced on the date that the Commission serves a probable cause report on a respondent – this is consistent with section 2.150(b) of the Lobbyist Ordinance.
- Staff has added new subsection 1.540(g), which sets out a limitations period for the collection of fines and penalties – this language tracks language that appears in the CFRO section 1.168(c)(4) and the Lobbyist Ordinance section 2.150(c).

**Decision Point 10:**

Shall the Commission approve the language regarding administrative and civil enforcement, and penalties, as discussed above and set forth in new section 1.540 on page 13 line 1 – page 15 line 18 of the draft amendments?

**17. Overall approval of the draft amendments**

There were several minor changes to citations and language in the draft amendments, such as changing the term “financing” to “campaign contributions” in new section 1.510(d) on page 3, line 18; and deleting current section 1.510 on page 4, lines 20-24. To ensure that the

Commission has fully considered and approved the changes set forth in the draft amendments, staff recommends that the Commission approve all the changes set forth in the 1.4.11 version of the draft amendments, subject to changes otherwise approved by the Commission at its meeting on January 10, 2011.

**Decision Point 17:**

Shall the Commission approve all the changes set forth in version 2 of the draft amendments, subject to changes otherwise approved by the Commission at its meeting on January 10, 2011?

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[Campaign consultant ordinance amendments]

**Ordinance amending Article I, Chapter 5 of the Campaign and Governmental Conduct Code to modify registration and disclosure requirements for campaign consultants.**

NOTE: Additions are single-underline italics Times New Roman;  
deletions are ~~strike-through italics Times New Roman~~.  
Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby amended to read as follows:

Sec. 1.500. – Findings.

(a) The City and County of San Francisco has a paramount interest in protecting the integrity and credibility of its electoral and government institutions. Election campaigns are highly competitive in San Francisco, and candidates frequently contract for the services of professional campaign consultants who specialize in guiding and managing campaigns.

(b) Decisions by elected officials in the City and County of San Francisco should be based on the best interests of the people and should be free from the influence of electoral politics. Campaign consultants play an influential role in local elections, and may use that influence to affect policy decisions of City officials. The regulation of campaign consultants protects the integrity of the City's decision making processes by informing the public about who is managing campaigns and what role those individuals have in decisions made by local elected officials.

(b)c It is the purpose and intent of the people of the City and County of San Francisco in enacting this Chapter to impose reasonable registration and disclosure requirements on campaign consultants. Required registration and disclosure of information by campaign

consultants will assist the public in making informed decisions, and protect public confidence in the electoral and governmental processes.

*(d) The important goals advanced by this Chapter will be best served if campaign consultants are encouraged to comply with registration and disclosure requirements through a user-friendly filing system, and interested members of the public can conveniently review those filings. The Ethics Commission should have the discretion to implement an electronic filing system for registered campaign consultants to achieve these ends.*

Sec. 1.505. – Amendment or Repeal of Chapter:

*The voters may amend or repeal this Chapter. The Board of Supervisors may amend this Chapter if all of the following conditions are met:*

*(a) The amendment furthers the purposes of this Chapter;*

*(b) The Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members;*

*(c) The proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors;*

*and*

*(d) The Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.*

Sec. 1.505.1.510. – Definitions.

Whenever used in this Chapter, the following definitions shall apply:

(a) "Campaign consultant" means any *personindividual* or entity that receives or is promised economic consideration equaling \$15,000 or more *in a calendar year within the past twelve months* for campaign consulting services. The term "campaign consultant" includes any *personindividual* or entity that subcontracts with a campaign consultant to provide campaign consulting services, and that receives or is promised economic consideration equaling

1 \$25,000 or more in a calendar year for providing campaign consulting services. The term  
2 "campaign consultant" does not include ~~persons who are~~ employees of a campaign consultant  
3 ~~who do not perform campaign consulting services~~, attorneys who provide only legal services,  
4 accountants who provide only accounting services, pollsters who provide only polling  
5 services, and treasurers who provide only those services which are required of treasurers by  
6 the Political Reform Act, California Government Code Section 81000, et seq.

7 (b) "Campaign consulting services" means participating in campaign management or  
8 developing or participating in the development of campaign strategy.

9 (c) "Campaign management" means conducting, coordinating or supervising a  
10 campaign to elect, defeat, retain or recall a candidate, or adopt or defeat a measure, including  
11 but not limited to hiring or authorizing the hiring of campaign staff and consultants, spending  
12 or authorizing the expenditure of campaign funds, directing, supervising or conducting the  
13 solicitation of contributions to the campaign, and selecting or recommending vendors or  
14 subvendors of goods or services for the campaign.

15 (d) "Campaign strategy" means plans for the election, defeat, retention or recall of a  
16 candidate, or for the adoption or defeat of a measure, including but not limited to producing or  
17 authorizing the production of campaign literature and print and broadcast advertising, seeking  
18 endorsements of organizations or individuals, seeking ~~financing~~ campaign contributions, or  
19 advising on public policy positions.

20 (e) "Candidate" means ~~a person~~ an individual who has taken affirmative action to seek  
21 nomination or election to ~~local office~~ City elective office, ~~a local officeholder~~ an individual holding  
22 City elective office who has taken affirmative action to seek nomination or election to any local  
23 state or federal elective office, or ~~a local officeholder~~ an individual holding City elective office who is  
24 the subject of a recall election.

25 (f) "City elective office" shall be defined as set forth in section 1.104 of this Code.

(jg) "Economic consideration" means any payments, fees, commissions, reimbursements for expenses, gifts, or anything else of value provided in exchange for campaign consulting services. "Economic consideration" does not include payments made to consultants to reimburse vendors.

(gj) "Lobby" means communicate with a local officeholder for the purpose of influencing local legislative or administrative action in exchange for economic consideration.

(h) "Lobbyist" is defined in Article II of this Code.\*

(i) "Local office" means the following elective offices in the City and County of San Francisco: Mayor, Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, Board of Education of the San Francisco Unified School District, and Governing Board of the San Francisco Community College District.

(jh) "Measure" means a local referendum or local ballot measure, whether or not it qualifies for the ballot shall be defined as set forth in section 1.104 of this Code.

(ki) "Vendor" means an personindividual or entity whothat sells goods or services, other than campaign consulting services, including but not limited to printing, catering, and transportation services. The term "vendor" does not include attorneys who provide only legal services, accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act, California Government Code Section 81000 et seq.

Sec. 1.510. — Prohibitions.

It shall be unlawful for any campaign consultant to provide campaign consulting services, or accept any economic consideration for the provision of campaign consulting services, without first registering with the Ethics Commission and complying with the reporting requirements specified in Section 1.515.



1           Sec. 1.515. – Registration Requirements, Reregistration Disclosures, Reporting, and Fees,  
2 and Termination.

3           (a) REGISTRATION ~~REPORTS~~REQUIREMENTS. Campaign consultants shall register with  
4 the Ethics Commission and comply with the other requirements imposed by this Chapter. Such  
5 registration shall occur no later than five business days of qualifying as a campaign consultant.

6           At the time of initial registration, each campaign consultant shall ~~report~~provide the  
7 following information to the Ethics Commission ~~the following information~~:

8           (1) The name, business address, e-mail address, ~~and~~ business telephone number, and  
9 website address, if any, of the campaign consultant;

10          (2) If the campaign consultant is an individual, the name of the campaign consultant's  
11 employer and a description of the business activity engaged in by the employer;

12          (3) The names of any individuals employed by the campaign consultant to assist in  
13 ~~providing the provision of~~ campaign consulting services;

14          (4) A statement of whether the campaign consultant, or any employee of the campaign  
15 consultant, ~~or any other employee of the campaign consultant's employer~~ is required to  
16 register with the Ethics Commission as a lobbyist pursuant to the Regulation of Lobbyists  
17 Ordinance, San Francisco Campaign and Governmental Conduct Code, Article II;<sup>§</sup> and

18          (5) ~~A statement of whether the campaign consultant is required to register with the Tax~~  
19 ~~Collector pursuant to the Business Tax Ordinance, San Francisco Municipal Code, Part III, Section~~  
20 ~~1001, et. seq.;~~ Any other information required by the Ethics Commission consistent with the purposes  
21 and provisions of this Chapter.

22           **(b) CAMPAIGN CONSULTANT DISCLOSURES.**

23           Campaign consultants shall submit disclosures regarding their activities on a monthly basis.  
24 No later than the fifteenth calendar day of each month, each campaign consultant shall submit the  
25 following information for the previous month.



1           (6~~1~~) The name, and business address, e-mail address and telephone number of each  
2 client to whom the campaign consultant provided campaign consulting services during the  
3 ~~preceding three months reporting period, and the date on which the client retained the campaign~~  
4 ~~consultant;~~

5           (7~~2~~) For each client, the total economic consideration promised by or received from the  
6 client in exchange for ~~the provision of~~ campaign consulting services during the ~~preceding three~~  
7 ~~months, provided that the total is \$500 or more reporting period;~~

8           (3) For each client, a list of the responsibilities that the campaign consultant will perform for  
9 the client;

10           (4) The name of each client who terminated the services of the campaign consultant during the  
11 reporting period and the date on which the client terminated the consultant's services;

12           (8~~5~~) Each ~~political~~ campaign contribution of \$100 or more made or delivered by the  
13 campaign consultant, or made by a client at the behest of the campaign consultant, ~~or for~~  
14 ~~which the campaign consultant acted as an agent or intermediary, during the preceding three months~~  
15 ~~in support of or in opposition to a candidate or measure during the reporting period to a person~~  
16 ~~holding City elective office, a candidate for such office, a committee controlled by such officer or~~  
17 ~~candidate, or a committee primarily formed to support or oppose a local ballot measure;~~

18           The following information regarding each campaign contribution shall be submitted to the  
19 Ethics Commission:

20           (A) The amount of the contribution;

21           (B) The name of the contributor;

22           (C) The date on which the contribution was made;

23           (D) The contributor's occupation;

24           (E) The contributor's employer, or if self-employed, the name of the contributor's business; and

25           (F) The committee to which the contribution was made.

~~(9) The cumulative total of all political contributions made or delivered by the campaign consultant, or which is made by a client at the behest of the campaign consultant, or for which the campaign consultant acted as an agent or intermediary, during the preceding three months in support of or in opposition to each individual candidate or measure, provided that the cumulative total is \$500 or more;~~

~~(10) Any gifts promised or made by the campaign consultant to a local officeholder during the preceding three months which in the aggregate total \$50 or more; and~~

(6) Economic consideration promised to or received by the campaign consultant during the reporting period from vendors and subvendors who provided campaign-related goods or services to a current client of the campaign consultant;

(7) The name of each City employee or City elective officer who is employed by the campaign consultant, or by a client of the campaign consultant at the behest of the campaign consultant, during the reporting period;

(8) Each City contract obtained by the campaign consultant during the reporting period, provided that the contract is approved by a City elective officer who is a client of the campaign consultant;

(9) Each appointment to public office received by the campaign consultant during the reporting period, provided that the appointment is made by a City elective officer who is a client of the campaign consultant;

~~(610) Any amendments to the campaign consultant's registration information as required by Subsection (a); and~~

~~(11) Any other information required by the Ethics Commission consistent with the purposes and provisions of this Chapter.~~

~~(b) REREGISTRATION REPORTS. Each campaign consultant shall reregister annually no later January 1st.~~

1 (c) INITIAL DISCLOSURE REPORT. At the time of the first disclosure report submitted  
2 following the campaign consultant's registration, the reporting period for Subsections (b)(1)-(b)(4)  
3 shall be the preceding twelve months.

4 (ed) FEES. At the time of initial registration and reregistration each subsequent calendar  
5 year on or before February 1, each campaign consultant shall pay to the Ethics Commission a  
6 registration fee and an additional fee for each client of the campaign consultant. The amount of the  
7 fee shall be: \$500. Campaign consultants earning no more than \$10,000 in a twelve-month  
8 period shall pay a registration fee of \$200. Campaign consultants earning more than \$10,000  
9 in a twelve-month period shall pay a registration fee of \$500. Registration shall not be complete  
10 until the Ethics Commission has received full payment of the fee.

11 (i) Campaign consultants earning at least \$1,000 but not more than \$5,000 per calendar year  
12 shall pay a registration fee of \$50 and shall pay a client fee of \$50 per client;

13 (ii) Campaign consultants earning more than \$5,000 but not more than \$20,000 per calendar  
14 year shall pay a registration fee of \$200 and a client fee of \$50 per client;

15 (iii) Campaign consultants earning more than \$20,000 per calendar year shall pay a  
16 registration fee of \$400 and a client fee of \$50 per client.

17 When a client is acquired subsequent to initial registration or reregistration, the per client fee  
18 shall be paid at the time of filing the information required by Subsection (d). The Ethics Commission  
19 shall deposit fees collected pursuant to this Section in the General Fund of the City and County of San  
20 Francisco. On or after July 1, 1999, the Ethics Commission shall evaluate the fees set by this Section  
21 and propose any amendments for approval by the Board of Supervisors no later than December 1,  
22 1999. If the Ethics Commission or the Board of Supervisors takes no action, the fees set by this Section  
23 shall remain in effect.

1 *(d) CLIENT AUTHORIZATION STATEMENTS. At the time of initial registration, the*  
2 *campaign consultant shall submit to the Ethics Commission a written authorization from each client*  
3 *that contracts with the campaign consultant for campaign consulting services.*

4 *If the campaign consultant is retained by a client after the date of initial registration, the*  
5 *campaign consultant must file a Client Authorization Statement before providing any campaign*  
6 *consulting services to the client and before receiving any economic consideration from the client in*  
7 *exchange for campaign consulting services, and in any event no later than 15 days after being retained*  
8 *to provide campaign consulting services to the client.*

9 *(e) QUARTERLY REPORTS. Each campaign consultant shall file with the Ethics Commission*  
10 *quarterly reports containing the following information:*

11 *(1) For each client, the total economic consideration promised by or received from the client*  
12 *during the reporting period for campaign consulting services, provided that the total is \$500 or more;*

13 *(2) The total economic consideration promised by or received from all clients during the*  
14 *reporting period for campaign consulting services;*

15 *(3) Political contributions of \$100 or more made or delivered by the campaign consultant, or*  
16 *made by a client at the behest of the campaign consultant, or for which the campaign consultant acted*  
17 *as an agent or intermediary, during the reporting period in support of or in opposition to a candidate*  
18 *or measure;*

19 *(4) The cumulative total of all political contributions made or delivered by the campaign*  
20 *consultant, or made by a client at the behest of the campaign consultant, or for which the campaign*  
21 *consultant acted as an agent or intermediary, during the reporting period in support of or in opposition*  
22 *to each individual candidate or measure, provided that the cumulative total is \$500 or more;*

23 *(5) Any gifts promised or made by the campaign consultant to a local officeholder during the*  
24 *reporting period which in the aggregate total \$50 or more;*

1 *(6) Economic consideration promised to or received by the campaign consultant during the*  
2 *reporting period from vendors and subvendors who provided campaign related goods or services to a*  
3 *current client of the campaign consultant;*

4 *(7) The name of each local officeholder and City employee who is employed by the campaign*  
5 *consultant, or by a client of the campaign consultant at the behest of the campaign consultant, during*  
6 *the reporting period;*

7 *(8) Each City contract obtained by the campaign consultant during the reporting period,*  
8 *provided that the contract is approved by a local officeholder who is a client of the campaign*  
9 *consultant;*

10 *(9) Each appointment to public office received by the campaign consultant during the reporting*  
11 *period, provided that the appointment is made by a local office-holder who is a client of the campaign*  
12 *consultant;*

13 *(10) Any other information required by the Ethics Commission consistent with the purposes*  
14 *and provisions of this Chapter.*

15 *Quarterly reports are due as follows: The report for the period starting December 1st and*  
16 *ending February 28th is due March 15th; the report for the period starting March 1st and ending May*  
17 *31st is due June 15th; the report for the period starting June 1st and ending August 31st is due*  
18 *September 15th; and the report for the period starting September 1st and ending November 30th is due*  
19 *December 15th.*

20 *(f) CLIENT TERMINATION STATEMENTS. Within 30 days after a client terminates the*  
21 *services of a campaign consultant, the campaign consultant shall submit to the Ethics Commission a*  
22 *statement that the client has terminated the services of the campaign consultant. A campaign*  
23 *consultant may not provide campaign consulting services to a client or accept economic consideration*  
24 *for the provision of campaign consulting services after a client termination statement is filed, until a*  
25 *new client authorization statement has been filed pursuant to Section 1.515(d).*

1 ~~(g) CAMPAIGN CONSULTANT TERMINATION STATEMENTS. A campaign consultant shall~~  
2 ~~comply with all requirements of this Chapter until the campaign consultant ceases all activity as a~~  
3 ~~campaign consultant and files a statement of termination with the Ethics Commission. A statement of~~  
4 ~~termination must include all information required by Subsection (e) for the period since the campaign~~  
5 ~~consultant's last quarterly report.~~

6 ~~(h) Each campaign consultant shall verify, under penalty of perjury, the accuracy and~~  
7 ~~completeness of the information provided under Sections 1.515 and 1.520(e).~~

8 ~~(i) Each campaign consultant shall retain for a period of five years all books, papers and~~  
9 ~~documents necessary to substantiate the reports and statements required under this Chapter.~~

10 (e) TERMINATION OF REGISTRATION.

11 (1) Failure to pay the annual registration fee by February 1 shall constitute termination of the  
12 campaign consultant's registration with the Ethics Commission.

13 (2) The Ethics Commission may establish additional processes for the termination of a  
14 campaign consultant's registration consistent with the purposes and provisions of this Chapter.

15 Sec. 1.520. – FILING UNDER PENALTY OF PERJURY; DOCUMENT RETENTION; AUDITS.

16 (a) All information required by this Chapter shall be submitted in a format designated by the  
17 Ethics Commission. The campaign consultant shall verify, under penalty of perjury, the accuracy and  
18 completeness of the information provided under this Chapter.

19 (b) Each campaign consultant shall retain for a period of five years all books, papers and  
20 documents necessary to substantiate the information included in the registration and disclosure reports  
21 required by this Chapter. This includes, but is not limited to, invoices and written contracts between  
22 the campaign consultant and all clients.

23 (c) At the Executive Director's discretion, the Ethics Commission may perform audits of  
24 registration and disclosure reports filed by campaign consultants under this Chapter. The Ethics



1 Commission, including its Executive Director, may issue subpoenas in furtherance of its duties under  
2 this section.

3 Sec. 1.525. – PROHIBITIONS.

4 (a) GENERAL RULE. It shall be unlawful for any campaign consultant to provide campaign  
5 consulting services, or to accept any economic consideration for the provision of campaign consulting  
6 services, without first registering with the Ethics Commission, paying the annual fee, and complying  
7 with the reporting requirements specified in section 1.510.

8 (b) EVASION OF OBLIGATIONS. No campaign consultant shall attempt to evade the  
9 obligations imposed by this Chapter through the use of agents, associates or employees.

10 Sec. 1.530. – TRAINING.

11 Each campaign consultant must complete a campaign consultant training session offered by the  
12 Ethics Commission within 60 days of the campaign consultant's initial registration. Thereafter,  
13 campaign consultants shall complete additional training sessions as required by the Executive  
14 Director, at his or her discretion. The Executive Director shall report any such additional  
15 training sessions to the Ethics Commission.

16 Sec. ~~1.520~~ 1.535. – POWERS AND DUTIES OF THE ETHICS COMMISSION.

17 (a) The Ethics Commission shall ~~provide forms for the reporting of~~ prescribe the format for  
18 the submission of all information required by this Chapter.

19 (b) The Ethics Commission shall ~~issue a registration number to each registered campaign~~  
20 consultant.

21 (c) ~~At the time of initial registration and reregistration, the Ethics Commission shall provide~~  
22 ~~the campaign consultant with a copy of the City's campaign and lobbyist laws, the Code of Conduct~~  
23 ~~specified in Section 1.530, and any related material which the Commission determines will serve the~~  
24 ~~purposes of this Chapter. Each campaign consultant must sign a statement acknowledging receipt of~~  
25 ~~these materials.~~



(db) The Ethics Commission shall compile the information provided in registration and quarterly-reports filed pursuant to this Chapter as soon as practicable ~~after the close of each quarter and shall forward a report of the compiled information to the Board of Supervisors and the Mayor and make such information available on its website.~~

(ec) The Ethics Commission shall preserve all original reports, statements, and other records required to be kept or filed under this Chapter for a period of five years. Such reports, statements, and records shall constitute a part of the public records of the Ethics Commission and shall be open to public inspection.

(fd) The Ethics Commission shall provide formal and informal advice regarding the duties under this Chapter of an personindividual or entity pursuant to the procedures specified in San Francisco Charter Section C3.699-12.

(ge) The Ethics Commission shall have the power to adopt all reasonable and necessary rules and regulations for the implementation of this Chapter pursuant to the procedure specified in Charter Section 15.102.\*

(f) At least once a year, the Ethics Commission shall provide a workshop or training session concerning this Chapter.

Sec. ~~1.525~~ 1.540 - ADMINISTRATIVE AND CIVIL ENFORCEMENT, AND PENALTIES.

(a) LATE FINES. ~~If any campaign consultant files an original statement or report after any deadline imposed fails to submit any information required by this Chapter, the Ethics Commission shall, in addition to any other penalties or remedies established in this Chapter, fine the campaign consultant impose a late filing fee of \$50 per day after the deadline until the statement or report information is received by the Ethics Commission. If any campaign consultant files an original statement or report after any deadline imposed by this Chapter, when the deadline is fewer than 30 days before or after an election, the Ethics Commission shall, in addition to any other penalties or remedies established in this Chapter, fine the campaign consultant \$100 per day after the deadline~~

1 until the statement or report is received by the Ethics Commission. The Ethics Commission may  
2 reduce or waive a fine if the Ethics Commission determines that the late filing was not willful  
3 and that enforcement will not further the purposes of this Chapter. ~~The Ethics Commission shall~~  
4 ~~deposit funds collected under this Section in the General Fund of the City and County of San~~  
5 ~~Francisco.~~

6 (b) ENFORCEMENT PROCEEDINGS. Any person who believes that ~~Section 1.510~~this  
7 Chapter has been violated may file a complaint with the Ethics Commission. Upon receipt of a  
8 complaint, or upon its own initiative, the Ethics Commission may investigate allegations of a  
9 violation of ~~Section 1.510~~this Chapter and enforce the provisions of ~~Section 1.510~~this Chapter  
10 pursuant to the procedures established in San Francisco Charter Section C3.699-13, and the  
11 Ethics Commission's ~~rules and r~~Regulations for Investigations and Enforcement Proceedings  
12 adopted pursuant to Charter Section 15.102.\*

13 (c) ADMINISTRATIVE PENALTIES. When the Ethics Commission, pursuant to the  
14 procedures specified in Charter Section C3.699-13 and the Ethics Commission's Regulations for  
15 Investigations and Enforcement Proceedings, determines ~~on the basis of substantial evidence~~ that an  
16 personindividual or entity has intentionally or negligently violated ~~Section 1.510~~this Chapter, the  
17 Commission may require the personindividual or entity to: (1) cease and desist the violation;  
18 (2) ~~file any reports or statements or pay any fees~~submit any information required by this Chapter,  
19 and/or (3) pay a monetary penalty of up to \$5,000 for each violation, or three times the  
20 amount not properly reported, whichever is greater. ~~The Commission may cancel for up to one~~  
21 ~~year the registration of any campaign consultant who has violated Section 1.510. A campaign~~  
22 ~~consultant whose registration has been canceled pursuant to this Section may not provide campaign~~  
23 ~~consulting services in exchange for economic consideration for the period that the registration is~~  
24 ~~canceled. When the period of cancellation ends, the campaign consultant may reregister pursuant to~~

1 Section 1.515(a) and (e). In addition to the administrative penalties set forth in this Section, the Ethics  
2 Commission may issue warning letters regarding violations and potential violations of this Chapter.

3 (d) CIVIL PENALTIES. Any person individual or entity which knowingly that intentionally or  
4 negligently violates or who causes any other person to violate Section 1.510 this Chapter may be  
5 liable in a civil action brought by the City Attorney for an amount up to \$5,000 per violation, or  
6 three times the amount not properly reported, whichever is greater.

7 (e) Any person or entity which intentionally or negligently violates Section 1.510 is guilty of a  
8 misdemeanor.

9 (e) JOINT AND SEVERAL LIABILITY. Should two or more individuals or entities be  
10 responsible for any violation under this Chapter, they shall be jointly and severally liable.

11 (f) LIMITATIONS PERIOD FOR CIVIL AND ADMINISTRATIVE ENFORCEMENT. No  
12 administrative, or civil, or criminal action shall be maintained to enforce Section 1.510 this  
13 Chapter unless brought commenced within four years after the date the cause of action accrued  
14 or the date that the facts constituting the cause of action were discovered by the Ethics  
15 Commission, or City Attorney, or District Attorney, whichever is later. For the purposes of this  
16 section, an administrative action is commenced on the date on which the Ethics Commission serves a  
17 probable cause report on the respondent pursuant to the Ethics Commission's Regulations for  
18 Investigations and Enforcement Proceedings.

19 (g) LIMITATIONS PERIOD FOR COLLECTION OF FINES AND PENALTIES. A civil action  
20 brought to collect fines or penalties imposed under this Chapter shall be commenced within four years  
21 after the date on which the monetary penalty or fine was imposed. For purposes of this Section, a fine  
22 or penalty is imposed when a court or administrative agency has issued a final decision in an  
23 enforcement action imposing a fine or penalty for a violation of this Chapter or the Executive Director  
24 has made a final decision regarding the amount of a late fine or penalty imposed under this Chapter.  
25 The Executive Director does not make a final decision regarding the amount of a late fine imposed

1 under this Chapter until the Executive Director has made a determination to accept or not accept any  
2 request to waive a late fine where such waiver is expressly authorized by this Chapter or a regulation  
3 adopted thereunder.

4 (gh) In investigating any alleged violation of Section 1.514this Chapter, the Ethics  
5 Commission, including its Executive Director, and City Attorney shall have the power to inspect,  
6 upon reasonable notice, all documents required to be maintained under Section 1.515(i)this  
7 Chapter. This power to inspect documents is in addition to other powers conferred on the  
8 Ethics Commission and City Attorney by the Charter, or by ordinance, including the power of  
9 subpoena.

10 SEC. 1.510. — ELECTRONIC FILING OF STATEMENTS AND REPORTS.

11 (a) — ELECTRONIC FILING REQUIRED. Whenever campaign consultants are required by  
12 this Chapter to file an original statement or report, the Ethics Commission may require the consultants  
13 to file an electronic copy of the statement or report. The electronic copy shall be due no later than the  
14 deadline imposed by this Chapter for filing the original statement or report.

15 (b) — POWERS AND DUTIES OF THE ETHICS COMMISSION.

16 (i) Pursuant to San Francisco Charter Section 15.102, the Ethics Commission shall adopt  
17 regulations specifying the electronic filing requirements applicable to campaign consultants. The  
18 Ethics Commission shall adopt these regulations no fewer than 120 days before the electronic filing  
19 requirements are effective.

20 (ii) The Ethics Commission shall prescribe the format for electronic copies of statements and  
21 reports no fewer than 90 days before the statements and reports are due to be filed.

22 (c) — PENALTIES. If any campaign consultant files an electronic copy of a statement or report  
23 after the deadline imposed by this Section, the Ethics Commission shall, in addition to any other  
24 penalties or remedies established in this Chapter, fine the campaign consultant \$10 per day after the  
25 deadline until the electronic copy is received by the Ethics Commission. The Ethics Commission may

1 *reduce or waive a fine if the Commission determines that the late filing was not willful and that*  
2 *enforcement will not further the purposes of this Chapter. The Ethics Commission shall deposit funds*  
3 *collected under this Section in the General Fund of the City and County of San Francisco.*

4 SEC. 1.545. - PROVISION OF FALSE OR MISLEADING INFORMATION TO THE ETHICS  
5 COMMISSION; WITHHOLDING OF INFORMATION.

6 *Any individual or entity that knowingly or willfully furnishes false or fraudulent evidence,*  
7 *documents, or information to the Ethics Commission under this Chapter, or misrepresents any material*  
8 *fact, or conceals any evidence, documents, or information, or fails to furnish to the Ethics Commission*  
9 *any records, documents, or other information required to be provided under this Chapter shall be*  
10 *subject to the penalties provided in Section 1.540.*

11 SEC. 1.550. - DEPOSIT OF FUNDS.

12 *The Ethics Commission shall deposit all funds collected under this Chapter, including payments*  
13 *for registration fees, late fines, and administrative penalties, in the General Fund of the City and*  
14 *County of San Francisco.*

15 SEC. ~~1.550~~ 1.555. - CODE OF CONDUCT.

16 *At the time of initial registration and ~~re-registration~~ annually thereafter no later than February*  
17 *1, each campaign consultant must elect whether to voluntarily comply with the following Code*  
18 *of Conduct:*

19 "I am familiar with all the laws, rules and regulations applicable to local campaigns;

20 "I will not knowingly make false statements about the qualifications or positions of any  
21 candidate, or about the scope and effect of any measure;

22 "I will not knowingly make false statements that any real or fictitious person supports or  
23 opposes a candidate or measure;



1 "In the event that I make inadvertent false statements about the qualifications or  
2 positions of any candidate or about the scope and effect of any measure, I will endeavor to  
3 provide corrected information in written form to the Ethics Commission within five days;

4 "I will refrain from appealing to prejudice in the conduct of a campaign, and from  
5 conducting, managing or advising a campaign, which appeals to prejudice based on race,  
6 gender, ethnic background, religious affiliation or nonaffiliation, sexual orientation, age,  
7 disability, or economic status;

8 "I will refrain from seeking to obtain the support of or opposition to any candidate or  
9 measure by the use of financial inducements or by the use of threats or coercion;

10 "I will refrain from influencing the submission of a measure to the San Francisco voters  
11 for the sole purpose of obtaining economic consideration for campaign consulting services;

12 "I will disclose through a filing at the San Francisco Ethics Commission any  
13 agreements that would result in a campaign consulting contract resulting from my efforts to  
14 influence the submission of a measure to the San Francisco voters at the time that I seek  
15 submission of any such measure;

16 "I will refrain from seeking to evade, or participating in efforts of others to evade, the  
17 legal requirements in laws pertaining to political campaigns;

18 "I will not knowingly participate in the preparation, dissemination, or broadcast of paid  
19 political advertising or campaign materials that contain false information; and

20 "I will refrain from accepting clients whose interests are adverse to each other."

21 SEC. ~~4-5351.560.~~ - SEVERABILITY.

22 ~~If any Section, subsection, subdivision, sentence, clause, phrase or portion of this Chapter, or~~  
23 ~~the application thereof to any person or entity is for any reason held to be invalid or unconstitutional~~  
24 ~~by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the~~  
25 ~~remaining portions of this Chapter or its application to other persons, business entities, or~~

1 ~~organizations. The Board of Supervisors hereby declares that it would have adopted this Chapter, and~~  
2 ~~each Section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the~~  
3 ~~fact that any one or more Sections, subsections, subdivisions, sentences, clauses, phrases, or portions,~~  
4 ~~or the application thereof to any person or entity, to be declared invalid or unconstitutional.~~

5 If any provision of this Chapter, or the application thereof to any person or circumstance, is  
6 held invalid, the validity of the remainder of the Chapter and the applicability of such provisions to  
7 other persons and circumstances shall not be affected thereby.

8 SEC. ~~1.5451.565.~~ - CONSTRUCTION WITH OTHER LAWS.

9 Lobbying by campaign consultants and employees of campaign consultants is  
10 governed by the applicable provisions of Article II, Chapter 1 of this Code, including Section  
11 2.117, which ~~prohibits campaign consultants and employees of campaign consultants from~~  
12 ~~communicating with current and former clients on behalf of another person or entity for the purpose of~~  
13 ~~influencing local legislative or administrative action in exchange for economic~~  
14 ~~considerations~~specifically regulates lobbying by campaign consultants.

15 Section 2. The operative date of this ordinance shall be January 1, 2013, unless the  
16 Ethics Commission approves a resolution establishing a later operative date for the ordinance.  
17 The Ethics Commission shall not establish an operative date for the ordinance less than 60  
18 days from the date of the resolution's adoption.

19  
20 APPROVED AS TO FORM:  
21 DENNIS J. HERRERA, City Attorney

22 By: \_\_\_\_\_  
23 JONATHAN GIVNER  
24 Deputy City Attorney  
25





## CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA  
City Attorney

JON GIVNER  
Deputy City Attorney

DIRECT DIAL: (415) 554-4694  
E-MAIL: jon.givner@sfgov.org

## MEMORANDUM

TO: MEMBERS, San Francisco Ethics Commission  
CC: JOHN ST. CROIX, Executive Director  
FROM: Jesse Capin Smith *JS*  
Chief Assistant City Attorney  
Jon Givner *JG*  
Andrew Shen *AS*  
Deputy City Attorneys  
DATE: January 5, 2011  
RE: Retention of Outside Counsel for Advice Regarding the 2011 Mayoral Election

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Consistent with City Attorney Dennis Herrera's August 27, 2010 memorandum regarding legal advice on matters concerning the 2011 mayoral election, we recommend that you retain outside counsel to advise the Ethics Commission, in place of this Office, on legal issues relating directly to that election. A copy of the August 27 memorandum is attached for your reference.

As discussed in section IV of that memorandum, we have a reciprocal relationship with three public law offices with expertise in municipal law: the Oakland City Attorney, the Santa Clara County Counsel, and the San Mateo County Counsel. Since the issuance of the August 27 memorandum, the Board of Supervisors has retained the Santa Clara County Counsel to provide advice regarding mayoral succession, and the Elections Commission has retained the San Mateo County Counsel to assist in election matters that relate directly to the 2011 mayoral election. Because of its expertise in campaign finance, the existence of a public financing program in Oakland, and the interest in distributing the relevant work among outside counsel, we recommend that you retain the Oakland City Attorney's Office, which has agreed to provide its legal representation without charge. We understand that Supervising Attorney Mark Morodomi will primarily handle your questions, although he may assign tasks to other deputies in the office as needed. Mr. Morodomi has extensive experience with state and local campaign finance laws, and we believe he and his colleagues would be appropriate counsel for the Ethics Commission.

The contact information for Mr. Morodomi is as follows: Mark Morodomi, Supervising Attorney, Oakland City Attorney's Office, 1 Frank Ogawa Plaza, 6th Floor, Oakland, CA 94612; phone (510) 238-6101.

cc: Mark Morodomi, Supervising Attorney, Oakland City Attorney's Office





DENNIS J. HERRERA  
City Attorney

DIRECT DIAL: (415) 554-4748  
E-MAIL: [tcra.collins@sfgov.org](mailto:tcra.collins@sfgov.org)

## MEMORANDUM

TO: MAYOR GAVIN NEWSOM  
MEMBERS, San Francisco Board of Supervisors  
MEMBERS, San Francisco Elections Commission  
MEMBERS, San Francisco Ethics Commission  
ANGELA CALVILLO, Clerk of the Board of Supervisors  
JOHN ARNTZ, Director of Elections  
JOHN ST. CROIX, Executive Director, Ethics Commission

FROM: DENNIS J. HERRERA *DJH*  
City Attorney

DATE: August 27, 2010

RE: Legal Advice on Matters Concerning the Mayor's Race

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Yesterday I took the first steps to raise funds as a possible candidate for the Mayor of San Francisco. During the campaign, I will continue to serve as the City Attorney for the City and County of San Francisco. This memorandum explains the City Attorney's Office's policies regarding representation of the City during the Mayor's race. Following a short period of administrative transition, the policies described in this memorandum will apply during the period (the "Campaign Period") beginning September 10, 2010 and ending at the conclusion of the campaign, which I anticipate will be the day the Board of Supervisors (the "Board") declares the results of the November 8, 2011 election.

### Summary

Under the San Francisco Charter, the City Attorney's Office provides a range of legal advice and representation to the City's officers, departments, boards and commissions, including advice regarding elections and campaign finance. Due to my decision to be a candidate in the Mayor's race, I intend to limit involvement of the City Attorney's Office and not personally participate in legal advice about matters related to elections and campaign requirements during the Campaign Period. To avoid even the appearance of any conflicts of interest, the City Attorney's Office has implemented the following protocols.

First, when a legal question directly involves the election or campaign for Mayor, the City Attorney's Office will not handle the matter. Instead, the City will retain outside counsel for advice and assistance, preferably from other public law offices. The City Attorney's Office has already made preliminary arrangements with three local public law offices to advise City departments about the limited range of issues directly involving the election and campaign for Mayor. This arrangement is consistent with past practices; my Office has a standing reciprocal agreement with other local law offices to provide legal support at no cost in situations like this.

Second, when a legal question involves elections or campaigns but does not directly involve the election or campaign for Mayor, the City Attorney's Office will handle the matter, but I will not participate in the matter during the Campaign Period. Within the next week, the Office will establish a screen so that I will not be involved in any legal advice regarding the

## Memorandum

DATE: August 27, 2010  
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RE: Legal Advice on Matters Concerning the Mayor's Race

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November 2011 election or campaigns, nor for that matter will I be involved in any legal advice about the upcoming November 2010 election or campaigns.

Third, for all other matters, the City Attorney's Office will continue to represent the City with my full involvement. Except in the two circumstances described above, I will remain actively involved in decisions regarding litigation, legislation, contracts, legal advice, investigations and claims.

## Discussion

## I. The Role of the City Attorney

As described in Charter section 6.102, the City Attorney is the legal counsel for the City. In that capacity, the City Attorney oversees an Office that represents the City, including its officers and employees, in litigation; drafts and approves legislation and contracts; and provides legal advice to the City and its commissions, officers and employees. See S.F. Charter § 6.102. The Office regularly advises the Department of Elections, the Elections Commission, the Ethics Commission, the Board and the Mayor's Office, each of which plays a role in funding, oversight and administration of local elections. The City Attorney's Office regularly advises those agencies on a range of matters, some that are specific to elections or campaigns and others that relate to general administrative matters that all City departments face. The general administrative advice includes legal advice about notice and agenda requirements for public meetings, responses to public records requests, the City's contracting process, contract administration, personnel issues, and other similar sorts of matters.

The Office's advice and representation on election- and campaign-related matters varies depending on the circumstances, and typically include the following:

- *Department of Elections and Elections Commission:* The Office provides advice regarding federal, state and local elections laws; represents the City in election-related litigation; and assists in drafting materials for publication in the Voter Information Pamphlet.
- *Ethics Commission:* The Office advises on the application and interpretation of local and state laws regarding campaign finance regulation, and drafts ordinances and regulations governing campaign finance and campaign conduct. In administrative enforcement proceedings alleging violations of campaign laws, the Office provides advice to the Commission and its staff. The Office also represents the City in litigation regarding campaign finance matters.
- *Board of Supervisors and Mayor:* The Office drafts legislation and advises on legal issues raised by proposed legislation regarding campaigns and elections, including amendments to the City Charter, the City's Campaign Finance Reform Ordinance ("CFRO") and the City's Municipal Elections Code ("MEC"). The Board has the authority to place measures on the ballot, and this Office usually drafts or approves those measures as to form and advises the Board and the Mayor regarding that process. Also, the Mayor or four or more individual members of the Board may submit a policy measure or ordinance to the voters, and this Office sometimes drafts those measures and advises the Mayor and Board about them, though we do not approve them as to form. This Office also provides advice on budgetary matters relation to the adoption of the budget and the City's funding of the Department of Elections and Elections Commission and the Ethics Commission.

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- *City Attorney's Office:* In addition to its role advising and representing City departments, the City Attorney's Office also has independent obligations regarding certain matters impacting elections and campaigns. For instance, the City Attorney drafts a title and summary for each proposed local measure circulated in an initiative petition (Cal. Elec. Code § 9203); prepares the ballot question for most local measures that appear on the City ballot (MEC § 510); reviews proposed formal opinions from the Ethics Commission and determines whether to concur in their conclusions (S.F. Charter § C3.699-12); and determines whether to investigate and prosecute complaints of campaign finance violations (S.F. Charter § C3.699-13(a); CFRO § 1.170(b)).

## II. The City Attorney's Office and the 2011 Election

As City Attorney, I am responsible for ensuring that every City officer, department, board and commission receives the highest quality legal representation, and my mayoral candidacy will not interfere with that goal. During the Campaign Period, I will take the following steps to ensure that the City continues to receive that highest quality legal representation and to avoid even the possible appearance of conflicts of interest.

### A. Matters That Directly Involve the Mayoral Election or Campaign.

During the Campaign Period, the City Attorney's Office will not handle legal questions that directly involve the mayoral election or campaign. As section IV of this memorandum explains further, the affected departments should select outside counsel in advance to advise or represent them in those matters, consistent with past practices.

The following examples illustrate when an affected department should rely on outside counsel. These examples, and each of the examples listed in the remaining sections of this memorandum, are for illustration purposes only, and are not intended as an exhaustive list of possible issues.

*Example 1 – Election questions regarding Mayoral candidates.* The Department of Elections has a legal question concerning the ballot designation, candidate qualification statement, nomination documents or electioneering activities of a candidate for Mayor. Because this question pertains specifically to the election or campaign for Mayor, the City Attorney's Office will not handle the matter.

*Example 2 – Campaign finance questions regarding Mayoral candidates.* The Ethics Commission has a legal question regarding the application of campaign finance laws to a particular candidate for Mayor, such as: (a) whether the candidate qualifies for the City's partial public financing program; (b) whether a particular mailer supports or opposes the candidate, potentially increasing the candidate's spending limit; (c) whether a political expenditure was independent or was coordinated with the candidate's campaign; or (d) whether the candidate used public funds for a lawful purpose. Because these questions pertain specifically to the election or campaign for Mayor, the City Attorney's Office will not handle the matters.

*Example 3 – Complaints filed with Ethics Commission alleging violations in the mayoral campaign.* The Ethics Commission receives a complaint alleging a violation of the local campaign finance laws by a candidate for Mayor or by a committee supporting or opposing a candidate for Mayor. The Commission's staff seeks legal advice regarding how to prosecute the complaint. Because these questions pertain specifically to the election or campaign for Mayor, the City Attorney's Office will not handle the matter.



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For these matters where the City Attorney's Office will not be providing legal advice, outside counsel will handle the matter during the Campaign Period. In each such instance, the outside counsel may contact the City Attorney's Office to inquire whether this Office has any existing materials, such as previously-issued memoranda or research files, that could be relevant to the issue at hand. Neither outside counsel nor my staff will involve me in any of these informational inquiries and exchanges.

Also, if any such matter is still pending after the Campaign Period ends, this Office will re-evaluate whether use of outside counsel is still needed. That determination will depend on whether the acts alleged in the complaint involved or affected my campaign.

**B. Matters Involving Elections or Campaign Conduct That Do Not Directly Involve the Mayoral Election or Campaign.**

When a legal question does not *directly* involve the election or campaign for Mayor, use of outside counsel is not necessary. In those circumstances, the affected City department will consult as usual with the City Attorney's Office. But to avoid even an appearance of a conflict of interest, I will not participate in matters involving elections or campaigns during the Campaign Period. The City Attorney's Office will adopt a screen, memorialized in writing, so that the deputies handling general election and campaign matters regarding the November 2010 and 2011 elections do not communicate with me about these matters. The screen will also apply to the Office's Managing Attorney, Marisa Moret. Chief Assistant Jesse Smith will supervise the deputies handling the matters and will have final authority for the Office's decisions.

The following examples illustrate when the Office will screen me from participating in advice about elections or campaign conduct during the Campaign Period:

*Example 1 – Election law questions.* The Department of Elections has legal questions concerning (a) the qualifications, nomination documents or electioneering activities of a candidate for another City office, (b) the process for qualifying, withdrawing or resubmitting ballot measures, or (c) operational issues such as certification of the City's voting system, operation of satellite voting locations for early voting, or implementation of laws regarding voter registration. These questions do not pertain specifically to the election or campaign for Mayor, so the City Attorney's Office will handle the matters without my participation during the Campaign Period.

*Example 2 – Campaign finance questions.* The Ethics Commission has a legal question about interpretation of campaign finance laws like the City's contribution limits or disclosure rules, or about the effect of a pending appeals court case on the City's public financing system. The question is not related to any particular candidate or race. This question does not pertain specifically to the election or campaign for Mayor, so the City Attorney's Office will handle it without my participation during the Campaign Period.

*Example 3 – Tasks related to ballot measures.* The City Attorney's Office is responsible for preparing the title and summary for proposed ballot measures and for preparing ballot questions for measures that have qualified for the ballot. A designee of the City Attorney's Office also sits as an *ex officio* member of the Ballot Simplification Committee and prepares an initial draft digest for each measure that the Committee considers. These tasks do not pertain specifically to the election or campaign for Mayor, so the City Attorney's Office will handle them without my participation during the Campaign Period.



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RE: Legal Advice on Matters Concerning the Mayor's Race

*Example 4 – Litigation regarding elections or campaign finance.* A lawsuit is filed against the City challenging the City's voting system, ballot materials, or the application of the City's campaign finance laws. The litigation does not specifically pertain to the election or campaign for Mayor, so the City Attorney's Office will handle it without my participation during the Campaign Period.

*Example 5 – Elections or campaign finance legislation.* The Board or the Mayor seeks assistance drafting legislation to amend the Charter, the CFRO, or the MEC in a way that would affect local campaigns or elections, or seeks legal advice about such legislation while it is pending. Or, similarly, the Ethics Commission seeks assistance drafting regulations to interpret the CFRO. These questions do not pertain specifically to the election or campaign for Mayor, so the City Attorney's Office will handle them without my participation during the Campaign Period.

*Example 6 – General advice to Department of Elections, Elections Commission and Ethics Commission.* The Department of Elections, Elections Commission or Ethics Commission has a legal question concerning one of the general laws that govern all City agencies, such as a law governing public meetings, public records, contracting, or personnel. In most circumstances, because this advice could impact the City departments responsible for oversight of local elections and campaigns, the City Attorney's Office will handle it without my participation during the Campaign Period.

### C. Matters That Do Not Involve Elections or Campaign Finance

Most of this Office's legal work is unrelated to our advice regarding elections and campaigns. When a legal question does not involve the November 2010 or November 2011 election or campaign and election issues in those years, the affected City departments will consult as usual with the City Attorney's Office. I will continue my involvement and remain the final decision-maker for the Office. For example, for all such matters, the Office will continue to draft legislation and approve it as to form, provide legal opinions upon request, represent boards and commissions in public meetings, represent the City in litigation, and provide advice to officers, departments, boards and commissions on a wide variety of matters. The following examples illustrate the type of matter that the Office will handle without my screen.

*Example 1 – Legislation.* A member of the Board requests that the City Attorney's Office draft legislation on a matter unrelated to elections or campaign finance. The legislation will address a controversial topic that could be a matter of policy debate in the campaign for Mayor. Because the legislation does not involve elections or campaign conduct, the City Attorney's Office will handle the matter with my involvement. This approach is consistent with past practice in campaigns where my predecessors or I ran for re-election as City Attorney. Though a sitting City Attorney may state personal policy positions during a campaign, those positions do not interfere with the City Attorney's Charter role in approving legislation or my professional responsibilities as City Attorney.

*Example 2 – Litigation.* A lawsuit is filed against the City, or my Office files a lawsuit, on a matter unrelated to elections or campaign finance. The litigation will address a controversial topic and I may refer to it in the course of my campaign. Because the litigation does not involve elections or campaign conduct, the City Attorney's Office will handle the matter with my involvement.

*Example 3 – Redistricting.* Following the publication of the 2010 Census, the Department of Elections or the Elections Task Force seeks legal advice regarding the apportionment of Supervisorial districts. Because this advice will not affect elections or

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campaigns in November 2010 or November 2011, I will continue to be in charge of the City Attorney's Office's handling of the matter.

*Example 4 – Post-election determinations regarding conflicting measures.* The voters adopt two measures in a single election addressing the same subject matter. The City Attorney's Office must review the two measures to determine which provisions of the two measures conflict, if any, and how they should be codified. Because this task involves statutory interpretation rather than elections or campaign conduct, the City Attorney's Office will handle the matter with my involvement.

*Example 5 – General advice to City departments.* A City department that does not regulate campaigns or elections has a legal question a law governing public meetings, public records, contracting, or personnel. Because this advice does not involve elections or campaign conduct, the City Attorney's Office will handle the matter with my involvement.

### III. Determination to Use Outside Counsel or to Screen the City Attorney from Participation

It may not always be clear which of the categories described above applies to a particular legal question. During the Campaign Period, the determination about whether a particular matter should be referred to outside counsel, handled by the City Attorney's Office without my participation, or handled by the City Attorney's Office under my supervision will depend on the facts and circumstances of the situation. Chief Assistant Jesse Smith, or any deputy city attorney designated by him for particular matters, will be responsible for making these determinations, in consultation with the department seeking the advice or representation and the City Attorney's Office's Ethics and Elections Team.

### IV. Hiring Outside Counsel

As I mentioned above in this memorandum, it is likely that the Ethics Commission, and possibly the Department of Elections or Elections Commission, will require outside counsel. From time to time, our Office calls on other public law offices to serve as outside counsel in particular matters. In return, my Office has occasionally acted as outside counsel for other localities when their in-house attorneys were unavailable. This arrangement has proven effective in ensuring that the City receives high quality legal advice with a minimal expenditure of City resources. We have utilized this arrangement in past elections with success. For example, in 2009, the Department of Elections and the Elections Commission retained the Santa Clara County Counsel's Office to advise them about legal matters directly affecting the City Attorney's election when I was the incumbent candidate. I recommend taking the same approach during the Campaign Period.

My Office already has contacted the Oakland City Attorney, Santa Clara County Counsel, and San Mateo County Counsel, and all three offices have offered to serve as the City's outside counsel on the issues discussed in section II(A) of this memorandum. These agencies will not charge the City for their time. Because of their expertise and the cost savings, I encourage each of the affected departments to retain one of these agencies as their outside counsel. My Office will work closely with you to facilitate those arrangements. The Ethics Commission and the Department of Elections and Elections Commission finalize these arrangements as soon as possible to ensure that the City receives timely advice from qualified counsel when the need arises.

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RE: Legal Advice on Matters Concerning the Mayor's Race

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If any department chooses to seek outside counsel other than from the public law offices listed above, the department should be guided by the Charter sections that set criteria for outside counsel when the City Attorney has a conflict of interest. Those sections require the City to "give preference to engaging the services of a City attorney's office, a County counsel's office or other public entity law office with an expertise" regarding the subject matter of the representation. S.F. Charter §§ 6.102(1), 13.104.5. When private counsel is necessary, the attorney retained by the City "must be a member in good standing with the Bar of California" and must have "at least five years experience" in the subject matter of the representation. *Id.* The cost of outside counsel must be covered by the budget of the department requesting the legal advice or representation. *Id.* Charter section 13.104.5, which addresses the use of outside counsel by the Elections Commission and the Department of Elections when the City Attorney is standing for election, also provides that the outside counsel must comply with specific conflict of interest rules designed to minimize the risk of political influence. I recommend that any outside counsel retained to advise the City on matters directly involving the election or campaign for Mayor should comply with the same rules.

I am making every effort to ensure that the City receives the best possible legal representation during this period. If you have any questions about the policies set forth in this memorandum, feel free to contact me, or Jesse Smith or the general counsel assigned to work with your department.





# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

AMIEENNE S. STUDLEY  
CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

BENEDICT Y. HUR  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

## EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of January 10, 2011

### 1. Budget.

As previously reported, the Mayor has provided a budget target to all City departments, which have been asked to submit a savings equal to 10 percent of the department's base General Fund support (or \$213,023 for the Commission) and a 10 percent contingency cut. Of the 10 percent target, we have submitted the 2.5 percent savings proposal (\$53,256) that was due December 21; the remaining \$159,767 is due with the budget submission in February. With the 10 percent contingency, the amount of cuts requested from the Commission is \$426,045.

### 2. Public Financing of Candidates - Mayoral Program 2011

Staff has posted manuals and forms for the November 2011 election, including manuals and forms relating to the Mayoral public financing program. Training for candidates running for office in November 2011 will take place on the following four dates in 2011: January 27, April 12, June 23 and August 9. Staff continues to accommodate specific requests for training.

Candidates for Mayor who are interested in seeking public funding may submit an application for public funds beginning February 8. In order to receive public funds, an interested candidate must demonstrate, among other things, that he/she has received at least \$25,000 in qualifying contributions from at least 250 individuals who reside in the City.

### 3. Investigation and enforcement program.

Since its last regular meeting on December 13, 2010, the Ethics Commission has received one new complaint, and resolved four complaints. There are 29 pending complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	10
Conflict of Interest	5
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	12
<b>TOTAL</b>	<b>29</b>

#### 4. Campaign finance disclosure program.

a. Filing deadline. The next filing deadline is January 31, 2011 for the Second Semi-Annual statement, which covers the reporting period ending December 31, 2010. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations.

b. Collection of late filing fees and contribution forfeitures. In the FY 10-11, as of November 30, the Commission collected a total of \$28,000 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$135,680, of which waiver requests are pending for \$93,080; and \$22,629 is pending at the Bureau of Delinquent Revenues.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on pending accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnnie Carter for Community College Board	1226264	Johnnie Carter	6/16/06	\$9,520	\$6,595	\$6,595
2	Barbara Lopez for School Board	1312265	Mika Cade	10/12/10	\$350	N/A	<b>\$350</b>
3	Committee to Elect M. Valle for Treasurer	1278937	Manuel B. Valle	6/14/07	\$5,525	\$5,525	\$5,525
4	Bill Barnes for District 5	1265969	Alix Rosenthal	1/3/08	\$3,120	\$1,547	<b>\$1,347</b>
5	Care Not Cash	1244505	Ronald Jin	2/29/08	\$5,331	\$3,306	<b>\$3,031</b>
6	Omar Khalif for Board of Educ.	1287030	Omar Khalif	7/30/09	\$1,800	\$1,775	\$1,775
7	Myrna Lim for District 11 Sup	1306882	Myrna Lim	7/30/09	\$1,180	\$1,180	\$1,180
8	Myrna Lim for District 11 Sup	1256697	Jia Jun Chen	8/20/07	\$3,855	\$2,775	\$2,775
9	San Francisco Women's Political Committee	1243711	Giselle Barry	5/16/06	\$1,906	\$50	\$50
						<b>TOTAL</b>	<b>\$22,629</b>

#### 5. Revenues report.

For FY 10-11, the Commission is budgeted to generate \$78,000 in revenues. As of January 4, 2011, the Commission received and deposited \$47,159 as summarized below. The figure represents collection of approximately 60 percent of expected revenues for FY 10-11.

Revenues received and deposited as of January 4, 2011:



Source	Budgeted Amount FY 10-11	Receipts
Lobbyist Fees	\$8,000	\$3,500
Other Ethics General	\$1,000	\$243
Campaign Finance Fines	\$50,000	\$29,490
Campaign Consultant Fees	\$15,000	\$9,850
Lobbyist Fines	\$1,000	\$750
Statements of Economic Interests Fines	\$1,000	
Other Ethics Fines	\$1,000	\$1,076
Campaign Consultant Fines	\$1,000	\$2,250
Total	\$78,000	\$47,159

**6. Draft regulations related to complaints regarding Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force.**

Staff has forwarded draft regulations related to the handling of complaints regarding alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force. The Commission has received notice from the SOTF indicating that it has made significant progress in the review of the proposed regulations; however, the SOTF has requested that the Commission defer any action on the proposals until sometime this year. The SOTF also asked that the Commission consider conducting at least one joint, open meeting to discuss the proposals.

**7. Lobbyist program.**

As of January 1, 2011, 46 individual lobbyists were registered with the Commission. In FY 10-11, \$3,500 in lobbyist registration fees and \$750 in fines have been collected. The December 2010 reporting period deadline is December 15, 2010.

**8. Campaign Consultant program.**

As of January 4, 2011, 26 campaign consultants are active and registered with the Commission. \$9,850 in registration fees and \$2,250 in late fines have been collected during the 2010-2011 fiscal year. The annual re-registration report for all active campaign consultants was due January 3, 2011. The next campaign consultant quarterly report deadline is Tuesday, March 15, 2011. Staff will mail and e-mail reminder notices to all active campaign consultants two weeks before the deadline.

The Commission is scheduled to continue its discussion of proposed amendments to the Campaign Consultant Ordinance at its January meeting.

**9. Statement of Economic Interests program.**

The FPPC has recently posted the 2010/2011 version of the Statement of Economic Interests (SEI) Form 700, which is due on April 1. The Ethics Commission has scheduled SEI Trainings for February 9 and 22.



**10. Outreach and Education.**

Staff provided an orientation to ethics laws to a supervisor-elect and several legislative aides on December 22, 2010. The orientation covered the Statement of Incompatible Activities for the Board of Supervisors, general conflict of interest laws, gift rules, the Form 700, the Sunshine Declaration, AB1234 ethics training, and the Form SFEC-126.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments. Currently scheduled in-person trainings will be the SIA training for the Medical Examiner's Office which was rescheduled for March 3, 2011 and May 5, 2011.

The following are the currently scheduled trainings for 2011:

Candidates' Training: January 27, April 12, June 23, and August 9

Filing Officer SEI Training: February 9 and 22

Non-Candidate Recipient Committee Training: web training available online

Respectfully submitted,

---

John St. Croix  
Executive Director

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[DRAFT]  
Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
January 10, 2011  
Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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**I. Call to order and roll call.**

Chairperson Studley called the meeting to order at 5:34 PM and welcomed the new Commissioner, Beverly Hayon.

COMMISSION MEMBERS PRESENT: Jamieenne Studley, Chairperson; Eileen Hansen, Commissioner; Beverly Hayon, Commissioner; Benedict Y. Hur, Commissioner. Commissioner Ward was excused from the meeting.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: Peter Warfield; Ray Hartz; David Pilpel; Charles Marsteller; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Staff memorandum re: Complaint Disposition (No. 01-100115), dated October 14, 2010.
- Staff memorandum re: Proposed Amendments to the Campaign Consultant Ordinance, dated January 6, 2011.
- Draft Campaign Consultant Ordinance amendments, dated January 4, 2011.
- Memorandum from the Office of the City Attorney re: Retention of Outside Counsel for Advice Regarding the 2011 Mayoral Election
- Minutes of the Regular Meeting of the San Francisco Ethics Commission on December 13, 2010.
- Executive Director's Report to the Ethics Commission for the Meeting of January 10, 2011.

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

Ray Hartz stated that section 67.16 of the Sunshine Ordinance states that "a brief written summary... shall, if no more than 150 words, be included in the minutes." He objected to the placement of a written summary as an attachment to the minutes. He asked what the compelling state interest was in refusing to follow the Sunshine Ordinance and refusing to place a summary in the minutes. He stated that the Ethics Commission is enumerated in the Charter and is required to follow Sunshine. He stated that the *Good Government Guide* gives an opinion that attaching the minutes is sufficient, but the law states "in the minutes." [Mr. Hartz also submitted a written statement which has been included with these minutes.]

Peter Warfield then asked whether he would be permitted to make comments about agenda item 3 now and later. Chairperson Studley stated that the Commission would not address item 3 during the meeting. Executive Director St. Croix stated that the item was to be heard, but staff was unable to reach one of the parties. He stated that the party contacted the office earlier that day and asked for a continuance. He granted the continuance, as the party was unable to come to the meeting.

Chairperson Studley apologized for any inconvenience and for the short notice and asked for public comment.

Peter Warfield stated that he serves on a committee with Ms. Cauthen, but he was not speaking as a member of that committee. He stated that he agreed generally with Mr. Hartz. He stated that the inclusion of the summaries in the minutes is appropriate and intended to be met in line with what the person has said.

Mr. Warfield stated that he was extremely disappointed regarding the cancellation of item 3. He stated that his plans have been affected and he would have appreciated some notice. He made several comments regarding staff's memorandum of item 3. He stated that staff stated Ms. Gomez violated section 67.15 of the Sunshine Ordinance, but then later recommended the dismissal of the violation. He informed the Commission of another incident in March where he experienced similar treatment from Ms. Gomez. He stated that staff's memorandum downplayed the incident dramatically. He stated that Ms. Gomez yelled at Ms. Cauthen and asked the Commission to listen to the meeting tape or view the meeting DVD.

Chairperson Studley stated that she allowed Mr. Warfield to speak as though he spoke for two items, as there was a possibility that Mr. Warfield would not be able to return for a future meeting.

Commissioner Hansen asked Mr. Warfield a question about his first point regarding staff's recommendation about Ms. Gomez. She stated that staff's recommendation was not to dismiss the violation against Ms. Gomez, but against Ms. Blackman. Mr. Warfield stated that he was unclear as to why it would be dismissed against either of them, when the violation had occurred. He stated that he raised the question for the Commission to discuss the issue. Chairperson Studley stated that the Commission could not discuss the merits of the item, until it is placed on the agenda.

Mr. Hartz asked whether he would have additional time since Mr. Warfield was given additional time. He stated that he had been at last month's Ethics Commission meeting. He stated that he too had been disrupted by Ms. Gomez and that he had to justify his right to speak. He stated that Ms. Gomez would not come to the Ethics Commission to explain her behavior. He mentioned a Police Commissioner who had also committed a Sunshine and Brown Act violation and failed to explain his behavior.

**III. Consideration of Ethics Complaint No. 01-100115, alleging that the Library Commission, through its representative Secretary Sue Blackman, violated Sunshine**

**Ordinance sections 67.15(a) and 67.34 by failing to allow public comment at a Library Commission meeting, and section 67.21(e) by failing to send a knowledgeable representative to Task Force hearings.**

Item continued.

Public Comment:

None.

**IV. Consideration of possible amendments to the Campaign Consultant Ordinance (“Ordinance”), San Francisco Campaign and Governmental Conduct code section 1.500 et seq.**

Decision Point 2

Commissioner Hansen stated that she had concerns regarding this decision point, as the voters should have full participation. Executive Director St. Croix stated that before going to the voters, this matter must go before the Board and they have to agree to this point as well. He stated that whenever changes are made, sometimes there are unintended consequences and allowing super-majorities would permit the Commission to make the necessary changes without going to the voters.

Chairperson Studley asked the deadline for submitting this item for the November ballot. Mr. St. Croix estimated that the deadline was in June 2011.

Commissioner Hur stated that he saw the benefit of this authority. Chairperson Studley stated that the voters should decide what should come to them. Mr. St. Croix stated that the process of submitting items for the ballot is difficult and once the Commission sends an item for the ballot, the Commission must remain silent on the item. When there are proposed amendments with super-majorities, the Commission is permitted to comment and provide advice. Commissioner Hayon stated that many voters may feel overwhelmed with the number of ballot measures on the ballot, especially measures regarding technical changes with legalese.

**Motion 11-01-10-1 (Hur/Hayon): Moved, seconded and passed (3-1; Hansen dissent) that the Commission adopt decision point 2.**

Public Comment:

Mr. Pilpel welcomed the new Commissioners. He stated that the changes would be more streamlined and are consistent with other local laws.

Decision Point 3b

Deputy Director Ng stated that Commissioner Hansen expressed interest in returning to the original definition of “candidate” and staff agreed to leave the definition basically unchanged.

**Motion 11-01-10-2 (Hayon/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 3b.**

Public Comment:

Mr. Pilpel asked about the definition of "economic consideration" at the top of page 4 in the draft amendments, but then realized the question was for the next decision point.

Decision Point 3c

Commissioner Hansen expressed concerns regarding the last line of additional language on page 4, "reimburse vendors." Ms. Ng stated that staff recommended the language to match language from a 2001 Ethics Commission advice letter regarding economic consideration. She stated that consultants should not be deemed to have earned that money. Commissioner Hansen stated that the Commission would be assuming the reimbursement occurs and that the vendor pays.

Chairperson Studley asked the purpose of this definition. Ms. Ng stated that this definition would be used in defining the minimum thresholds for a consultant, as well as calculating what the consultant earns. Commissioner Hansen stated that she had concerns regarding hidden costs and the timing of reporting. Ms. Ng stated that the client (campaign committee/candidate) would report payments made on its campaign statements.

Commissioner Hur asked about lines 16-19 on page 4, which were proposed to be removed. Ms. Ng stated that the ordinance was too broad and that staff did not see why these exceptions should still exist. The Commissioners discussed possible scenarios of the proposed stricken language.

**Motion 11-01-10-3 (Hansen): Moved and not seconded that the Commission approve only the proposed changes to the definition of "vendor" in section 1.510(i).**

Commissioner Hur stated that he was not comfortable changing the definition of "vendor," as there could be unintended consequences.

Public Comment:

Mr. Pilpel stated that regarding "vendor," the relationship between candidates, committees, consultants, and vendors was a complex arrangement. He stated that the definition may exclude someone who would not otherwise qualify as a consultant. He stated that just because there is a vendor and economic consideration does not make the vendor subject to the Ordinance. He stated that "services" are defined elsewhere (in 1.510(b)-(d)) and it all goes together.

Mr. St. Croix stated that the intent was not to have reimbursements considered as income to the consultant. He suggested taking "reimbursements" from line 2, page 4, as well as the last sentence of the definition of "economic consideration." Commissioner Hayon asked why attorneys, accountants, and pollsters were originally excluded from the Ordinance. Mr. St. Croix stated that he did not know why.

Mr. Pilpel stated that some vendors, such as printers, are reluctant to work with campaigns because the campaign may not pay or take a while to pay. He stated that these vendors also do not want the cost becoming a contribution, if the campaign does not pay. He stated that the vendors work with consultants because they know they will be paid. He stated that vendors seek business and are eager to be paid for their work.

Charles Marsteller stated that Mike Housch or Larry Bush may be able to explain the reasons behind the inclusion or exclusion of certain groups in the Ordinance.

Mr. Pilpel stated that if someone is a professional campaign manager and that person is also an attorney, then that person would qualify under the Ordinance because that person is not providing “only legal services.” He suggested deleting lines 16-19 from “vendor.”

Mr. St. Croix suggested changing the language of the second sentence in “economic consideration” to the following: “Economic consideration does not include reimbursements made to consultants for payments made to vendors.” Commissioner Hur suggested deleting the second sentence, if there were other ways to limit the payments, such as a time limit. Mr. St. Croix agreed with removing the second sentence. Ms. Ng suggested adopting regulations to clarify “reimbursements.” Commissioner Hansen suggested adding a time frame for the reimbursements. Mr. St. Croix suggested adding “made on a timely basis.”

Mr. Marsteller stated that a common issue is where a mail house will advance postage to a committee and not bill the consultant and/or campaign committee. He stated that would be an accrued debt, but the Commission now has an accrued debt limit.

DCA Shen reminded the Commissioners that the definition of “economic consideration” is important in order to determine whether a consultant qualifies under the Ordinance. He expressed concerns including words like “timely” or “reasonable.”

**Motion 11-01-10-4 (Hur/Hansen): Moved and seconded that the Commission adopt decision point 3c, except that the phrase “reimbursements for expenses” be stricken from the first sentence and the second sentence be stricken in its entirety, and that the Commission adopt regulations after further research to clarify this issue.**

Public Comment:

Mr. Pilpel approved of the changes, but stated that the language is duplicative and unnecessary. Mr. Marsteller stated that staff may have a difficult task regarding the timeliness question.

The Commissioners discussed the possibility of kickbacks or commissions from vendors to consultants.

**Motion 11-01-10-5 (Hur/Hansen): Moved, seconded and passed (4-0) that the Commission adopt decision point 3c, except to strike the phrase “reimbursement for expenses” from line 2, page 4, and strike the additional proposed language and the second sentence of the definition of “economic consideration”; in addition, the Commission proposes that staff research the issue of providing anything else of value for the potential for reimbursements that are not made in a long period of time and draft regulations.**

Public Comment:

None.

Mr. Marsteller suggested adding examples into the campaign consultant manual in order to clarify this issue.

Decision Point 7

Commissioner Hur stated that section 1.525(b) – evasion of obligations – seemed vague and was too broad. Ms. Ng stated that the language mirrored that which is in the Lobbyist Ordinance. Commissioner Hansen noted that the decision point incorrectly referenced lines 12-18 on page 11 of the draft amendments, when it actually referenced lines 3-9 on page 12 of the draft amendments.

**Motion 11-01-10-6 (Hansen/Hayon): Moved, seconded and passed (3-1; Hur dissent) that the Commission adopt decision point 7.**

Public Comment:

Mr. Marsteller stated that the FPPC may have experience with the evasion question.

Decision Point 10

Commissioner Hur stated that he did not see “preponderance of the evidence” in the draft amendments. Staff agreed to add the language “on the basis of a preponderance of the evidence” in line 15, page 14 where “on the basis of substantial evidence” used to be.

The Commissioners then discussed the proposal to delete language in section 1.540(c) allowing the Commission to cancel the registration of any campaign consultant who has violated the registration or reporting requirements of the Ordinance for up to one year. Ms. Ng stated that the administrative penalty mirrors that in CFRO and that the monetary penalty would be sufficient. She also stated that it had never been used. Commissioner Hur expressed concerns that there was no limitation on the Commission to cancel a consultant’s registration. Mr. St. Croix suggested adopting regulations to limit the Commission’s ability to do so.

Mr. Pilpel stated that the language in lines 11-14 on page 15 was strange.

Mr. Marsteller stated that the cancellation of someone’s registration was a severe sanction.

**Motion 11-01-10-7 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 10, except for the fourth bullet point from staff’s memorandum.**

Public Comment:

None.

**Motion 11-01-10-8 (Hur/Hansen): Moved, seconded and passed (4-0) that Commission staff consider regulations that would provide guidance when that power would be used by the Commission.**

Public Comment:

None.



Decision Point 17

Commissioner Hur clarified that the decision point would take everything discussed at this meeting and during December's meeting into account.

**Motion 11-01-10-9 (Hayon/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 17.**

Public Comment:

Mr. Pilpel stated that line 12 on page 5 may need to be changed; he suggested "employee." Chairperson Studley stated that line 14 on page 5 was being changed. Mr. St. Croix stated that would be taken under consideration. Mr. Pilpel stated that subsections 7 and 8 of section 1.515(b) were unlikely. He also encouraged the Commission to add the requirement for a consultant to disclose whether s/he or any employee serves as an officer or director of a general purpose recipient committee and, if so, to require the consultant to list the name of the organization. He stated that he suggested that the Commission require disclosure and not prohibit it.

- V. Possible retention of the Oakland City Attorney's Office as legal counsel to advise the Ethics Commission on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco.**

Executive Director St. Croix stated that staff would like the Commission's approval on this arrangement, so that staff would have someone if any questions are raised regarding the mayoral race. DCA Shen clarified the nature of the firewall within the Office of the City Attorney. He stated that the City Attorney's office would handle general questions regarding public financing and campaign finance, without the assistance of Dennis Herrera. He stated that the City Attorney's office would not be involved in specific questions regarding the mayoral race.

**Motion 11-01-10-10 (Hayon/Hansen): Moved, seconded and passed (4-0) that the Commission retain the Oakland City Attorney's Office as legal counsel to advise the Ethics Commission on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco.**

Public Comment:

Mr. Pilpel stated that Mr. Morodomi previously worked for the FPCC and asked whether the written agreement was a public document.

DCA Shen stated that there may not be a need for a written agreement.

- VI. Closed session.**

**Motion 11-01-10-11 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission enter into closed session.**

Public Comment:

Mr. Marsteller stated that he had a comment, but missed the earlier item for general public comment. He stated that there may be coordination for ranked-choice voting. He stated that there may be deployment of public financing resources to ranked-choice tickets and coordination between committees. He suggested that the Commission hold interested persons' meetings about it.

Mr. Pilpel stated that he had questions regarding the budget, but then stated that it was not on the agenda. He then asked about the item to be discussed during closed session. DCA Shen stated that there was a constitutional challenge to the public financing program.

[Entered CLOSED SESSION at 8:13 PM.]

[Returned FROM CLOSED SESSION at 8:27 PM.]

#### **VII. Discussion and vote regarding closed session action and deliberations.**

**Motion 11-01-10-12 (Hur/Hansen): Moved, seconded and passed (4-0) that the Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: existing legislation.**

Public Comment:

None.

#### **VIII. Minutes of the Commission's regular meeting of December 13, 2010.**

**Motion 11-01-10-13 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission adopt the minutes of the Commission's regular meeting of December 13, 2010, without discussion.**

Public Comment:

None.

#### **IX. Executive Director's Report.**

Executive Director St. Croix stated that February's meeting will be on Valentine's Day. He stated that there had been a probable cause hearing scheduled, but that has been continued. He stated that another probable cause hearing is scheduled for February and is expected to take the majority of the meeting time. He stated that the Commission will need to consider the annual budget at the February meeting. He stated that the Commission was required to submit \$53,000 in savings from this year's budget and that was approved. He stated that there have already been many questions regarding public financing for the Mayoral race and there is a training scheduled for the end of January 2011.

Mr. St. Croix then stated that this meeting may be the last meeting that Commissioner Hansen would attend as a Commissioner, but that she may remain on the Commission in February and March. He stated that he wanted to thank her for her tenure. Chairperson Studley stated that she

appreciated Commissioner Hansen's tenacity and candor and her work on the Commission. Commissioner Hur stated that he appreciates hearing her comments and views and agrees with Chairperson Studley and the Executive Director.

Commissioner Hansen stated that at times it was a struggle, but that she has had a phenomenal six years. She stated that she was appreciative to have been able to serve the City in this way. She stated that she hopes her replacement would work well with the other Commissioners and that s/he would continue in the same vein. She stated that she hopes that the Commission sets the bar high enough so that other cities would follow and thanked the Commissioners for their service.

**X. Items for future meetings.**

Public Comment:

None.

**XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

**XII. Adjournment.**

**Motion 11-01-10-14 (Hayon/Hansen): Moved, seconded and passed (4-0) that the Commission adjourn.**

Public Comment:

None.

Meeting adjourned at 8:35 PM.

Respectfully submitted,

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Catherine Argumedo

This summary statement was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.

The placement of this summary, as an attachment to the minutes, violates the clear wording of the Sunshine Ordinance. The Ethics Commission has made specious arguments to justify this variance from the law. The Brown act clearly states, "...any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest." It goes on to say, "...that prohibiting critical comments was a form of viewpoint discrimination." Further, "such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue." The placement of public comment summaries, in variance with the law, is intended to relegate those comments to a position of secondary validity. In reality, it serves no other purpose. Does anyone believe that a member of the commission would, objecting to how their comments were reported in the minutes, be denied the opportunity to correct the record?



**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**February 14, 2011 5:30 P.M.  
and AGENDA**

**Room 408 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

GOVERNMENT  
DOCUMENTS DEPT

FEB 10 2011

SAN FRANCISCO  
PUBLIC LIBRARY

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Budget discussion. A proposed Ethics Commission budget for the Fiscal Year beginning on July 1, 2011 is due on February 22, 2011. Commissioners will review staff's recommendations and provide guidance in preparing the budget submission for FY 2011-2012. (Discussion and possible action.)
- IV. Selection of Random Audits of 2010 Committees. Staff estimates that it will have time and resources to conduct as many as seven random audits of non-publicly financed candidate, ballot measure and general purpose committees that were active in the 2010 elections. Some of these audits will be performed during the remainder of this fiscal year; the others will be performed in the next fiscal year. The Commission may choose these seven committees on a random basis at this meeting. (Discussion and possible action.)
- V. Election of Chair and Vice-chair. The Commission will elect a Chair and Vice-chair to serve for the coming year. (Discussion and possible action.)
- VI. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 (a) and (c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff and existing litigation as defendant.

- a. Conference with Legal Counsel: Anticipated litigation as Plaintiff

Number of possible cases: 1

- b. Conference with Legal Counsel: Existing litigation as Defendant

Number of cases: 1

Committee on Jobs Candidacy Advocacy Fund et al v. Dennis Herrera et al,  
Case No. C 07-03199 JSW (U.S. District Court, N.D. Cal.), filed June 18, 2007

VII. Discussion and vote regarding closed session action and deliberations. (Discussion and possible action.)

a. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

b. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding existing litigation.

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: existing litigation.

VIII. Minutes of the Commission's regular meeting of January 10, 2011. (Discussion and possible action.)

IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the budget, the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Discussion.)

X. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

*Know Your Rights Under the Sunshine Ordinance*

*Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Chris Rustom by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [sot@sf.gov](mailto:sot@sf.gov). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy*



from Mr. Rustom or by printing Chapter 67 of the San Francisco Administrative Code on the Internet,  
<http://www.sfgov.org/sunshine/>

If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

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Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics)

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

JAMIEENNE S. STUDLEY  
CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

BEVERLY HAYON  
COMMISSIONER

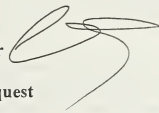
BENEDICT Y. HUR  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

## Memorandum

**To:** Members, Ethics Commission

**From:** John St. Croix, Executive Director 

**Re:** Fiscal Year 2011/2012 Budget Request

**Date:** February 9, 2011

As I previously stated in the January ED Report, the Mayor's office has provided a budget target to all City departments, which have been asked to submit a savings equal to 10 percent of the department's base General Fund support (or \$213,023 for the Commission) and a 10 percent contingency cut. Of the 10 percent target, we have absorbed a 2.5 percent reduction in the current year's budget (\$53,256) as a "down payment" on the initial 10% cut proposed for next year; the remaining \$159,767 cut is expected to be included in our budget submission. With the 10 percent contingency, the amount of cuts requested from the Commission is \$426,045.

Our budget in the current fiscal year breaks down as follows:

Operating budget	\$2,212,226
<u>Election Campaign Fund</u>	<u>1,976,494</u>
	\$4,188,720
<u>2.5% cut (from operating funds)</u>	<u>53,256</u>
	\$4,135,464

In the two fiscal years prior to this one, I recommended a budget submission that respects both the reality of the City's fiscal difficulties and the independence of the Ethics Commission. I suggest the Commission follow the identical pattern this year; we should submit a budget request that does not include the requested cuts but also does not request any increase in funding.

Please note that should the Commission decide to accept the cuts, or should the City require the Ethics Commission to accept the cuts, 100% of the funds will have to come from salaries and benefits. There are insufficient funds remaining in other accounts to meet the requested targets. A loss of \$426,045 would mean the termination of at least four, and possibly five, staff positions.

As stated, the initial operating budget for the Commission this year was \$2,212,226. I suggest the Commission use this as a base for our FY 2011/12 request, but factor in expected cost-of-living increases in fringe benefits. The contribution to the Election Campaign Fund is required by local law and is based on the population formula of \$2.75 per year for each resident. This proposal breaks down as follows:

Operating budget	\$2,250,000
Election Campaign Fund	<u>2,000,000</u>
	\$4,250,000

As a point of information, the current balance in the Election Campaign Fund is \$5,001,903. The FY 11/12 deposit will bring that figure to just over \$7 million. Staff has estimated that the disbursements for this year's Mayoral race will run between \$5 million and \$8 million. There is a balance of \$5,509,095 in funds previously de-appropriated from the Fund by the Mayor's office that remain payable back to fund as needed.

The historical funding of the Ethics Commission is as follows:

FY 94 - 95	157,000
FY 95 - 96	261,000
FY 96 - 97	313,274
FY 97 - 98	394,184
FY 98 - 99	475,646
FY 99 - 00	610,931
FY 00 - 01	727,787
FY 01 - 02	877,740
FY 02 - 03	1,156,295
FY 03 - 04	909,518
FY 04 - 05	1,052,389
FY 05 - 06	1,382,441
FY 06 - 07	8,416,109 (1,711,835 non-grant funding)*
FY 07 - 08	3,592,078 (2,261,877 non-grant funding)**
FY 08 - 09	5,453,874 (2,241,818 non-grant funding)
FY 09 - 10	6,011,566 (2,283,368 non-grant funding)***
FY 10 - 11	4,188,720 (2,212,226 non-grant funding)****

\*Includes 6,704,274 front-loaded funding for Mayoral Election Campaign Fund

\*\*Includes 1,358,747 annual set-aside for the Election Campaign Fund

\*\*\*Does not include \$85,205 mid-year budget reduction; includes \$1,783,858 restoration of funds previously taken from Election Campaign Fund

\*\*\*\*Does not include \$53,256 mid-year reduction



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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CHAIRPERSON

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BEVERLY HAYON  
COMMISSIONER

BENEDICT Y. HUR  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: February 9, 2011

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Shaista Shaikh, Assistant Deputy Director

Re: Audit Selection of Year 2010 Committees

This memorandum explains the Ethics Commission's audit selection guidelines and summarizes the levels of financial activity by the different types of committees that were active during 2010. The Commission will randomly select committees to be audited at its February 14, 2011 meeting.

Staff has determined that it will be able to audit seven recipient committees that were active in elections during the calendar year 2010. The audit pool includes:

- all candidates<sup>1</sup> who ran for City elective office in the November 2010 election;
- ballot measure committees active in the June and November 2010 elections; and
- general purpose recipient committees that were active in 2010.

Table 1: Types and Financial Activity Levels of Committees Active in 2010

Level of Financial Activity <sup>2</sup>	Ballot Measure Committees	Candidates	General Purpose Committees	No. of committees in audit pool	No. of committees to be selected
\$100,000 or below	7	20	20	47	3 (6%)
Above \$100,000	10	4	16	30	4 (13%)
	17	24	36	77	7 (9%)

<sup>1</sup> Publicly financed candidates were not part of the audit pool because they are subject to a mandatory audit. The pool also excludes candidates for county central committees, committees that were audited through the 2009 random selection process, and committees with financial activity of less than \$10,000.

<sup>2</sup> For candidates and ballot measure committees, the level of financial activity is based on the sum of contributions received by these candidates and committees during 2009 and 2010. For general purpose committees, the level of financial activity is based on the sum of expenditures made in 2009 and 2010.

Staff will begin to administer the public financing program for mayoral candidates in the November 2011 election and will continue to administer the public financing program through the first part of fiscal year 2011-2012. Candidates for the 2011 election were able to raise qualifying and matching contributions beginning in May 2010 and submit applications for public funding beginning in February 2011.

The mandatory audits of the 2010 publicly financed Board of Supervisors candidates will begin in March 2011. In addition to the 22 publicly financed Board of Supervisors candidates who will be audited, staff has determined it can perform seven randomly selected audits from the 2010 election cycle.



Filer ID	Committee Name	Committee Type	Total Expenditures	Total Contributions	Level of Financial Activity
1329001	STANDING UP FOR WORKING FAMILIES, NO ON B, A COALITION OF TEACHERS, NURSES, FIREFIGHTERS, PUBLIC EMPLOYEES AND HEALTH CARE ADVOCATES	Ballot Measure Committee	\$ 1,590,741	\$ 1,489,221	2
1326739	YES ON PROPOSITION B, supported by Public Defender Jeff Adachi, author Harriet Heyman, business investors Michael Moritz & Warren Hellman, Basic American Goods executives... (Complete Name See Form 410)	Ballot Measure Committee	\$ 1,132,124	\$ 1,125,642	2
1329703	Standing up to Save San Francisco - No on Measures B and K / Yes on Measures J and N, a coalition of Teachers, Nurses, Public School Parents and Labor Organizations	Ballot Measure Committee	\$ 593,897	\$ 654,709	2
1325809	SAN FRANCISCANS FOR A BETTER MUNI, YES ON G, WITH SUPPORT FROM SF FORWARD, PLAN C SAN FRANCISCO, SFAR, COMMITTEE ON JOBS GOVERNMENT REFORM FUND COMMITTEE, SF COALITION FOR RESPONSIBLE GROWTH AND SPUR	Ballot Measure Committee	\$ 570,898	\$ 553,882	2
1329402	ECONOMIC RECOVERY SAN FRANCISCO, NO ON J & N, SPONSORED BY BUSINESS ASSOCIATIONS	Ballot Measure Committee	\$ 419,011	\$ 417,063	2
1324390	SAN FRANCISCO EARTHQUAKE AND DISASTER RESPONSE PLAN, YES ON B	Ballot Measure Committee	\$ 445,540	\$ 411,585	2
1327161	Coalition for Civil Sidewalks - Yes on L - No on M 2010	Ballot Measure Committee	\$ 401,648	\$ 399,570	2
1332447	SAN FRANCISCO FIRE FIGHTERS LOCAL 798, NO ON B	Ballot Measure Committee	\$ 300,902	\$ 300,902	2
1331755	COALITION TO STIMULATE THE ECONOMY, NO ON N, MAJOR FUNDING BY SAN FRANCISCO ASSOCIATION OF REALTORS	Ballot Measure Committee	\$ 155,340	\$ 156,369	2
1327135	COMMITTEE TO PRESERVE RENTAL HOUSING, NO ON F, MAJOR FUNDING BY SAN FRANCISCO ASSOCIATION OF REALTORS	Ballot Measure Committee	\$ 139,784	\$ 141,319	2
1323880	Why Tuesday San Francisco - Yes on I 2010	Ballot Measure Committee	\$ 70,282	\$ 67,529	1
1325332	San Francisco Rising Committee to support SF measures D, E, I, J, N, and opposing SF measures B, G, K and L, a coalition of community organizing groups working for low-income people of color in SF	Ballot Measure Committee	\$ 65,956	\$ 57,900	1
1331012	Yes on Measure A 2010	Ballot Measure Committee	\$ 42,785	\$ 42,730	1
1330262	Yes on Prop D	Ballot Measure Committee	\$ 39,244	\$ 39,359	1

Filer ID	Committee Name	Committee Type	Total Expenditures	Total Contributions	Level of Financial Activity
1328619	Sidewalks Are For People - A Committee Opposed to Proposition L	Ballot Measure Committee	\$ 8,314	\$ 10,909	1
1325816	Tenants For Fair Rents, A Committee To Support Proposition F	Ballot Measure Committee	\$ 10,720	\$ 10,720	1
1276564	COMMITTEE TO SUPPORT OUR CITY COLLEGE--YES ON A	Ballot Measure Committee	\$ 97,966	\$ -	1
1319573	Janet Reilly for District 2 Supervisor 2010	Candidate	\$ 368,746	\$ 363,865	2
1320480	Mark Farrell for District 2 Supervisor 2010	Candidate	\$ 264,365	\$ 265,198	2
1316861	Phil Ting for Assessor 2010	Candidate	\$ 222,910	\$ 196,533	2
1321823	Carmen Chu for Supervisor 2010	Candidate	\$ 145,349	\$ 178,098	2
1304864	Murase For School Board 2010	Candidate	\$ 71,406	\$ 83,650	1
1328573	Margaret Brodtkin for School Board 2010	Candidate	\$ 64,904	\$ 64,852	1
1325785	Natasha Hoehn for Board of Education 2010	Candidate	\$ 61,866	\$ 61,803	1
1327824	COMMITTEE TO RE-ELECT SUPERVISOR ALIOTO-PIER 2010	Candidate	\$ 13,933	\$ 40,530	1
1321119	Laura Spanjian for Supervisor 2010	Candidate	\$ 40,004	\$ 38,585	1
1326632	RE-ELECT PUBLIC DEFENDER JEFF ADACHI 2010	Candidate	\$ 18,923	\$ 38,474	1
1330169	Hydra Mendoza for School Board, 2010	Candidate	\$ 33,436	\$ 34,723	1
1331661	Lawrence Wong for College Board 2010	Candidate	\$ 6,688	\$ 22,927	1
1243852	Reelect Dr. Anita Grier Community College Board 2010	Candidate	\$ 7,736	\$ 19,311	1
1322970	Diane Wesley Smith Campaign for Supervisor D#10 Committee November 2, 2010	Candidate	\$ 20,990	\$ 17,980	1
1323076	Glendon Anna Conda Hyde for District 6 Supervisor 2010	Candidate	\$ 17,804	\$ 17,804	1
1326025	Carole Migden for Democratic County Central Committee 2010	Candidate	\$ 12,136	\$ 15,589	1
1320085	Matt Drake for Supervisor 2010	Candidate	\$ 13,458	\$ 14,523	1
1328923	Re-Elect Kim-Shree Mauras to Board of Education 2010	Candidate	\$ 21,148	\$ 14,328	1
1322775	John Rizzo for Community College Board 2010	Candidate	\$ 11,342	\$ 12,694	1
1328402	Campaign to Elect Stephen Weber District 10 Supervisor 2010	Candidate	\$ 11,898	\$ 11,898	1
1328733	James Pan for Assessor 2010	Candidate	\$ 10,277	\$ 11,350	1
1327771	Committee to Elect Norman for Supervisor 2010	Candidate	\$ 8,737	\$ 11,117	1
1303565	Rachel Norton for Board of Education	Candidate	\$ 1,229	\$ 10,930	1
1330886	SUPERVISOR MICHELA ALIOTO-PIER LEGAL DEFENSE FUND	Candidate	\$ 85,945	\$ -	1
1296947	Service Employees International Union Local 1021 Issues PAC	General Purpose Committee	\$ 881,465	\$ 933,980	2
742051	San Francisco Democratic County Central Committee	General Purpose Committee	\$ 592,399	\$ 407,471	2
1317554	San Francisco Police Officers Association Issues PAC	General Purpose Committee	\$ 399,091	\$ 399,339	2

2010 Audit Pool

File ID	Committee Name	Committee Type	Total Expenditures	Total Contributions	Level of Financial Activity
1331757	COALITION FOR SENSIBLE GOVERNMENT WITH MAJOR FUNDING BY SAN FRANCISCO ASSOCIATION OF REALTORS SF FORWARD SPONSORED BY SAN FRANCISCO CHAMBER OF COMMERCE	General Purpose Committee	\$ 291,217	\$ 294,000	2
891575	Teachers, Nurses, Muni riders, neighbors and working families supporting Mandelman for Supervisor 2010 sponsored by labor organizations	General Purpose Committee	\$ 229,476	\$ 239,900	2
1331561	Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor	General Purpose Committee	\$ 227,211	\$ 230,500	2
1332919	ALLIANCE FOR JOBS AND SUSTAINABLE GROWTH, A COALITION OF LABOR UNIONS AND BUSINESS ASSOCIATIONS SUPPORTING SCOTT WIENER FOR SUPERVISOR 2010	General Purpose Committee	\$ 213,774	\$ 221,500	2
1330488	ALLIANCE FOR JOBS AND SUSTAINABLE GROWTH, A COALITION OF LABOR UNIONS AND BUSINESS ASSOCIATIONS SUPPORTING STEVE MOSS FOR SUPERVISOR 2010	General Purpose Committee	\$ 206,693	\$ 193,199	2
1330509	SAN FRANCISCO LABOR COUNCIL LABOR & NEIGHBOR INDEPENDENT EXPENDITURE POLITICAL ACTION COMMITTEE	General Purpose Committee	\$ 203,175	\$ 194,303	2
991525	ALLIANCE FOR JOBS AND SUSTAINABLE GROWTH, A COALITION OF LABOR AND BUSINESS ASSOCIATIONS SUPPORTING THERESA SPARKS FOR SUPERVISOR 2010	General Purpose Committee	\$ 197,385	\$ 175,400	2
1330513	Friends Supporting Debra Walker for Supervisor 2010 sponsored by labor organizations	General Purpose Committee	\$ 186,004	\$ 176,800	2
1331560	SAN FRANCISCO LABOR & NEIGHBOR MEMBER EDUCATION/POLITICAL ISSUES COMMITTEE, sponsored by the San Francisco Labor Council	General Purpose Committee	\$ 149,515	\$ 151,976	2
970630	GOLDEN GATE RESTAURANT ASSOCIATION PAC	General Purpose Committee	\$ 139,814	\$ 96,473	2
932123	SF SOS PAC	General Purpose Committee	\$ 127,425	\$ 23,300	2
1248619	Municipal Executives Association of San Francisco PAC	General Purpose Committee	\$ 117,250	\$ 117,250	2
1271203	Coleman Action Fund for Children Committee	General Purpose Committee	\$ 116,930	\$ 109,389	2
1311766	SAN FRANCISCO LABOR COUNCIL LABOR & NEIGHBOR	General Purpose Committee	\$ 89,459	\$ 80,710	1
941562	San Francisco Women's Political Committee	General Purpose Committee	\$ 87,417	\$ 202,072	1
1243711		General Purpose Committee	\$ 76,856	\$ 60,107	1

File ID	Committee Name	Committee Type	Total Expenditures	Total Contributions	Level of Financial Activity
1332622	D10 Forward, sponsored by the San Francisco Building and Construction Trades Council	General Purpose Committee	\$ 75,651	\$ 81,000	1
1327006	Clean SF	General Purpose Committee	\$ 70,592	\$ 67,500	1
1237101	San Francisco Building and Construction Trades Council Political Organization of Workers for Employee Rights (POWER PAC)	General Purpose Committee	\$ 57,217	\$ 27,125	1
990028	Protect Our Benefits	General Purpose Committee	\$ 56,923	\$ 56,613	1
840002	San Francisco Apartment Association PAC sponsored by San Francisco Apartment Assoc.	General Purpose Committee	\$ 39,787	\$ 39,518	1
961946	San Francisco Young Democrats	General Purpose Committee	\$ 38,147	\$ 32,154	1
1328230	New Day for SF	General Purpose Committee	\$ 27,952	\$ 30,200	1
991741	District 11 Democratic Club	General Purpose Committee	\$ 24,685	\$ 21,527	1
1239281	Sierra Club S.F. Bay Chapter Campaigns	General Purpose Committee	\$ 16,135	\$ 22,379	1
1330472	SAN FRANCISCO PARENT POLITICAL ACTION COMMITTEE	General Purpose Committee	\$ 14,896	\$ 13,195	1
1286295	San Francisco Building and Construction Trades Council Political Organization of Workers for Employee Rights Political Issues Committee (POWER PIC)	General Purpose Committee	\$ 14,504	\$ 16,000	1
1332793	BAY AREA FIREFIGHTERS PAC FUND OPPOSING MARK FARRELL FOR SUPERVISOR 2010	General Purpose Committee	\$ 14,487	\$ -	1
963103	Noe Valley Democratic Club	General Purpose Committee	\$ 14,426	\$ 7,692	1
1226595	San Francisco Small Business Advocates	General Purpose Committee	\$ 12,825	\$ 2,600	1
931558	Asian Pacific Democratic Club PAC	General Purpose Committee	\$ 12,680	\$ 10,600	1
892390	Richmond District Democratic Club	General Purpose Committee	\$ 12,626	\$ 10,495	1
990831	Committee on Jobs Candidate Advocacy Fund	General Purpose Committee	\$ 12,185	\$ -	1

2010 Audit Pool

Filer ID	Committee Name	Committee Type	Total Expenditures	Total Contributions	Level of Financial Activity
	Criteria				Level of Financial Activity
	\$100,000 or below				1
	Above \$100,000				2







# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

JAMIEENNE S. STUDLEY  
CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

BEVERLY HAYON  
COMMISSIONER

BENEDICT Y. HUR  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

## EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of February 14, 2011

### 1. Budget.

As previously reported, the Mayor has provided a budget target to all City departments, which have been asked to submit a savings equal to 10 percent of the department's base General Fund support (or \$213,023 for the Commission) and a 10 percent contingency cut. The Commission will discuss staff's proposed budget at the February meeting.

### 2. November 8, 2011 Election.

Staff conducted a training on January 27, 2011 for candidates running for Mayor, District Attorney or Sheriff in November 2011. As of February 8, 25 candidates for Mayor, four for District Attorney and two for Sheriff have filed an intention statement to run for office in the November 8, 2011 election.

Candidates for Mayor who are interested in seeking public funding may submit an application for public funds beginning February 8. In order to receive public funds, an interested candidate must demonstrate, among other things, that he/she has received at least \$25,000 in qualifying contributions from at least 250 individuals who reside in the City.

### 3. Investigation and enforcement program.

Since its last regular meeting on January 10, 2011, the Ethics Commission has received one new complaint. There are 29 pending complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	10
Conflict of Interest	5
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	12
<b>TOTAL</b>	<b>29</b>

### 4. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline occurred on January 31, 2011 for the Second Semi-Annual statement, which covers through the reporting period ending

December 31, 2010. Twenty committees are delinquent in filing the Second Semi Annual statement and will be sent a Non-Specific Written Notice.

The next filing deadline is August 1, 2011 for the First Semi-Annual statement, which covers the reporting period ending June 30, 2011. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations.

b. Collection of late filing fees and contribution forfeitures. In the FY 10-11, as of January 31, the Commission collected a total of \$31,017 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$132,484, of which waiver requests are pending for \$93,080; and \$22,022 is pending at the Bureau of Delinquent Revenues.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on pending accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnnie Carter for Community College Board	1226264	Johnnie Carter	6/16/06	\$9,520	\$6,595	\$6,595
2	Barbara Lopez for School Board	1312265	Mika Cade	10/12/10	\$350	\$350	\$350
3	Committee to Elect M. Valle for Treasurer	1278937	Manuel B. Valle	6/14/07	\$5,525	\$5,525	\$5,525
4	Bill Barnes for District 5	1265969	Alix Rosenthal	1/3/08	\$3,120	\$1,547	\$1,041
5	Care Not Cash	1244505	Ronald Jin	2/29/08	\$5,331	\$3,306	\$2,731
6	Omar Khalif for Board of Educ.	1287030	Omar Khalif	7/30/09	\$1,800	\$1,775	\$1,775
7	Myrna Lim for District 11 Sup	1306882	Myrna Lim	7/30/09	\$1,180	\$1,180	\$1,180
8	Myrna Lim for District 11 Sup	1256697	Jia Jun Chen	8/20/07	\$3,855	\$2,775	\$2,775
9	San Francisco Women's Political Committee	1243711	Giselle Barry	5/16/06	\$1,906	\$50	\$50
						<b>TOTAL</b>	<b>\$22,022</b>

## 5. Revenues report.

For FY 10-11, the Commission is budgeted to generate \$78,000 in revenues. As of February 9, 2011, the Commission received and deposited \$85,286 as summarized below. The figure represents collection of approximately 109 percent of expected revenues for FY 10-11.

Revenues received and deposited as of February 9, 2011:

Source	Budgeted Amount FY 10-11	Receipts
Lobbyist Fees	\$8,000	\$33,500
Other Ethics General	\$1,000	\$292
Campaign Finance Fines	\$50,000	\$33,368
Campaign Consultant Fees	\$15,000	\$12,650
Lobbyist Fines	\$1,000	\$2,050
Statements of Economic Interests Fines	\$1,000	\$0
Other Ethics Fines	\$1,000	\$1,076
Campaign Consultant Fines	\$1,000	\$2,250
Total	\$78,000	\$85,286

**6. Draft regulations related to complaints regarding Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force.**

The Sunshine Ordinance Task Force (SOTF) has informed the Commission that its review of draft regulations related to the handling of complaints regarding alleged violations of the Sunshine Ordinance and referrals from the SOTF continues. The SOTF anticipates that it will complete its work sometime this spring.

**7. Lobbyist program.**

As of February 7, 2011, 60 individual lobbyists were registered with the Commission. In FY 10-11, total revenues collected to date are \$35,550, which consists of \$33,500 in lobbyist registration fees and \$2,050 in fines. The January 2011 reporting period deadline is February 15, 2011.

**8. Campaign Consultant program.**

As of February 9, 2011, 23 campaign consultants are active and registered with the Commission. \$12,650 in registration fees and \$2,250 in late fines have been collected during the 2010-2011 fiscal year. The next campaign consultant quarterly report deadline is Tuesday, March 15, 2011. Staff will mail and e-mail reminder notices to all active campaign consultants two weeks before the deadline.

The Commission is scheduled to continue its discussion of proposed amendments to the Campaign Consultant Ordinance at its January meeting.

**9. Statement of Economic Interests program.**

On February 7, 2011, staff sent notification to filing officers to notify filers of filing deadlines for the FPPC Form 700, Sunshine Ordinance Declaration, and the Certificate of Ethics Training.

The Ethics Commission has rescheduled the Filing Officer SEI Training to February 15. Additional one-on-one trainings will be facilitated on an as needed basis.

**10. Outreach and Education.**

On January 26, 28, and 31, staff facilitated nine one-on-one e-filing trainings for committee treasurers and candidates.

On February 1 and 3, staff facilitated four one-on-one Filing Officer SEI Trainings.

Staff continued to engage the FPPC Chairman's Task Force on the Political Reform Act on a variety of its reform proposals, including making the electronic filing the document of record for campaign finance filings. This resulted in a recommendation from the Task Force to the FPPC to this effect. The Task Force proposals in their entirety were presented to the FPPC on January 28, 2011.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments. Currently scheduled trainings will be the SIA training for the Medical Examiner's Office, Commission on the Status of Women, and the Public Utilities Commission.

The following are the currently scheduled trainings for 2011:

Candidates' Training: January 27, April 12, June 23, and August 9

Filing Officer SEI Training: February 15

Non-Candidate Recipient Committee Training: web training available online

Ethics and SIA Training for the Commission on the Status of Women: February 23

SIA Training for the Department of Building Inspection: web training available online

SIA Training for the Medical Examiner's Office: March 3 and May 5

SIA Training for the Public Utilities Commission: web training requested

Respectfully submitted,



John St. Croix  
Executive Director

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**[DRAFT]**  
Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
February 14, 2011  
Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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**I. Call to order and roll call.**

Chairperson Studley called the meeting to order at 5:34 PM. She stated that Commissioner Hansen was excused from the meeting. She stated that Commissioner Hansen's term ended, but that there has been no new appointee for her position and she is able to continue serving on the Commission.

COMMISSION MEMBERS PRESENT: Jamienne Studley, Chairperson; Beverly Hayon, Commissioner; Benedict Y. Hur, Commissioner; Charles Ward, Commissioner. Commissioner Hansen was excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Assistant Deputy Director; Richard Mo, Chief Enforcement Officer; Garrett Chatfield, Investigator/Legal Analyst; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Mollie Lee, Deputy City Attorney.

OTHERS PRESENT: Unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Memorandum from the Executive Director re: Fiscal Year 2011/2012 Budget Request, dated February 9, 2011.
- Staff memorandum re: Audit Selection of Year 2010 Committees, dated February 9, 2011.
- List of 2010 Audit Pool.
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission on January 10, 2011.
- Executive Director's Report to the Ethics Commission for the Meeting of February 14, 2011.

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

Chairperson Studley stated that the Commission would allocate three minutes to each person for public comment. She also stated that there would be time for public comment during each agenda item as well.

**III. Budget Discussion.**

Executive Director St. Croix stated that the Mayor's Budget office asked the Commission to make serious cuts to next year's budget. He stated that the Commission needs to be respectful that the

City is in a budget crisis, but that the Commission is also an independent agency. He stated that he proposed the same strategy as last year and the year before last. He proposed to present a budget without the requested 10% cuts. He stated that the proposal is to make a 2.5% reduction in this year's budget as a down payment for next year's budget. He stated that he would like to present this year's budget and not ask for anything more and that, ultimately, the decision would be up to the Mayor's Office and the Board of Supervisors. He stated that all cuts would come out of personnel and fringe benefits, as there are no other available funds. He stated that the highest priority of the office is to conduct audits. He also stated that the election campaign fund is separate from the operating budget and the money does not commingle.

Chairperson Studley stated that the balance was a reasonable one and consistent with what the Commission has done in the past. She stated that the budget discussions may be more difficult this year than any other year.

**Motion 11-02-14-1 (Hayon/Ward): Moved, seconded and passed (4-0) that the Commission accept the Executive Director's strategy on the 2011-2012 budget request.**

Public Comment:

None.

#### **IV. Selection of Random Audits of 2010 Committees.**

Executive Director St. Croix stated that there were three categories of committees and that staff will not audit committees with financial activity less than \$10,000. He stated that staff can perform seven audits, in addition to the 20+ audits that are being conducted of the candidates who received public financing. Mr. St. Croix stated that staff recommends conducting four audits of committees whose activity was over \$100,000 and three audits of committees whose activity was between \$10,000 and \$100,000. He also stated that the committee "Carole Migden for Democratic County Central Committee 2010" should not be included in the audit pool list.

Chairperson Studley asked whether the audits of committees (based on financial activity) were comparable to previous years. Ms. Shaikh stated that the odds are 13% higher for the committees in the higher financial activity level and 6% lower for the middle activity level. She stated that staff chose a larger percentage of committees with higher activity levels. Commissioner Hur asked whether there would be a material difference in the amount of work between auditing a committee with \$100,000 or more in activity and one with less financial activity. Ms. Shaikh stated that each committee is different and some are more organized than others. Ms. Shaikh then invited a member of the public to help with the audit selection, who read the names of the committees in the audit pool from slips of paper and them in a box for random selection.

The member of the public read the names of the committees in the first category (those with activity above \$100,000): Standing Up for Working Families, No on B, A Coalition of Teachers, Nurses Firefighters, Public Employees and Health Care Advocates; Yes on Proposition B; Standing Up to Save San Francisco - No on Measures B and K/Yes on Measures J and N, a Coalition of Teachers, Nurses Public School Parents and Labor Organizations; San Franciscans for a Better MUNI, Yes on G; Economic Recovery San Francisco, No on J & N; San Francisco Earthquake and Disaster



Response Plan - Yes on B; Coalition for Civil Sidewalks – Yes on L - No on M 2010; San Francisco Firefighters Local 798, No on B; Coalition to Stimulate the Economy, No on N; Committee to Preserve Rental Housing, No on F; Janet Reilly for District 2 Supervisor 2010; Mark Farrell for District 2 Supervisor 2010; Phil Ting for Assessor 2010; Carmen for Chu for Supervisor 2010; Service Employees International Union Local 1021 Issues PAC; San Francisco Democratic County Central Committee; San Francisco Police Officers Association Issues PAC; Coalition for Sensible Government with Major Funding by San Francisco Association of Realtors; San Francisco Forward Sponsored by San Francisco Chamber of Commerce; Teachers, Nurses, MUNI riders, Neighbors and Working Families supporting Mandelman for Supervisor 2010 sponsored by Labor Organizations; Common Sense Voters, SF 2010, Vote for Mark Ferrell for District 2 Supervisor; Alliance for Jobs and Sustainable Growth, A Coalition of Labor Unions and Business Associations Supporting Scott Weiner for Supervisor 2010; Alliance for Jobs and Sustainable Growth, A Coalition of Labor Unions and Business Associations Supporting Steve Moss for Supervisor 2010; San Francisco Labor Council Labor and Neighbor Independent Expenditure PAC; Alliance for Jobs and Sustainable Growth, A Coalition of Labor and Business Associations Supporting Theresa Sparks for Supervisor 2010; Friends Supporting Debra Walker for Supervisor 2010, sponsored by Labor Organizations; San Francisco Labor and Neighbor Member Education/Political Issues Committee, sponsored by the San Francisco Labor Council; Golden Gate Restaurant Association PAC ; San Francisco SOS PAC; and Municipal Executive Association of San Francisco PAC.

The following four committees were randomly chosen for audit from this pool:

- Standing Up to Save San Francisco - No on Measures B and K/Yes on Measures J and N, a Coalition of Teachers, Nurses Public School Parents and Labor Organizations
- Phil Ting for Assessor 2010
- San Francisco Forward Sponsored by San Francisco Chamber of Commerce
- San Francisco Labor and Neighbor Member Education/Political Issues Committee, sponsored by the San Francisco Labor Council

The member of the public then read the names of the committees in the second category (those with activity between \$10,000 and \$100,000): Why Tuesday San Francisco - Yes on I 2010; San Francisco Rising Committee to Support San Francisco Measures D, E, I, J, N, and opposing San Francisco Measures B, G, K, and L, a Coalition of Community Organizing Groups Working for Low-Income People of Color in San Francisco; Yes on Measure A 2010; Yes on Prop D; Sidewalks Are For People – A Committee Opposed to Proposition L; Tenants for Fair Rents, A Committee to Support Proposition F; Committee to Support Our City College - Yes on A; Murase for School Board 2010; Margaret Brodtkin for School Board 2010; Natasha Hoehn for Board of Education 2010; Committee to Re-Elect Supervisor Alioto-Pier 2010; Laura Spanjan for Supervisor 2010; Re-Elect Public Defender Jeff Adachi 2010; Hydra Mendoza for School Board 2010; Lawrence Wong for College Board 2010; Re-elect Dr. Anita Grier Community College Board 2010; Diane Wesley Smith Campaign for Supervisor District 10; Glendon Anna Conda Hyde for District 6 Supervisor 2010; Matt Drake for Supervisor 2010; Re-Elect Kim-Shree Maufas to Board of Education 2010; John Rizzo for Community College Board 2010; Campaign to Elect Stephen Weber District 10 Supervisor 2010; James Pan for Assessor 2010; Committee to Elect Norman for Supervisor 2010; Rachel Norton for Board of Education; Supervisor Michela Alioto-Pier Legal Defense Fund; Coleman Action Fund for Children Committee; San Francisco Labor Council Labor & Neighbor; San Francisco Women's Political Committee; D10 Forward, sponsored by the San Francisco

Building and Construction Trades Council; Clean SF; San Francisco Building and Construction Trades Council Political Organization of Workers for Employee Rights (POWER PAC); Protect Our Benefits; San Francisco Apartment Association PAC, sponsored by San Francisco Apartment Association; San Francisco Young Democrats; New Day for San Francisco; District 11 Democratic Club; Sierra Club San Francisco Bay Chapter Campaigns; San Francisco Parent PAC; San Francisco Building and Construction Trades Council Political Organization of Workers for Employee Rights Political Issues Committee (POWER PIC); Bay Area Firefighters PAC Fund Opposing Mark Ferrell for Supervisor 2010; Noe Valley Democratic Club; San Francisco Small Business Advocates; Asian Pacific Democratic Club PAC; Richmond District Democratic Club; and Committee on Jobs Candidate Advocacy Fund.

The following three committees were randomly chosen for audit from this pool:

- Noe Valley Democratic Club
- Protect Our Benefits
- Laura Spanjan for Supervisor 2010

Ms. Shaikh and Chairperson Studley thanked the member of the public for her assistance.

Public Comment:

None.

**V. Election of Chair and Vice-Chair.**

Chairperson Studley stated that the position of Chair has a two-year maximum, with one-year intervals. Commissioner Ward nominated Commissioner Hur for Chair of the Ethics Commission. Commissioner Hur stated that he would be honored to serve as Chair of the Commission. Commissioner Ward stated that he thought Commissioner Hur would do a fine job as Chair.

Public Comment:

A member of the public stated that he had never attended a meeting before and asked to hear some more information about Commissioner Hur.

Commissioner Hur stated that he is an attorney in private practice. He stated that he has served on this commission for about a year. He stated that he is a former Coro Fellow in San Francisco. He also stated that he was a graduate of Harvard and Stanford Universities. He stated that he also serves on the Board of Directors of Bay Area Community Resources.

All four Commissioners present voted in favor of Commissioner Hur becoming Chair of the Ethics Commission for the next year. Chairperson Studley congratulated Commissioner Hur and applauded his commitment to the people of the City of San Francisco.

Commissioner Ward nominated Commissioner Studley for Vice-Chair of the Commission. Chairperson Studley thanked Commissioner Ward and stated that she would be happy to continue working with the Commission in that way.

Public Comment:

None.

Chairperson Studley stated that she was the President and Chief Executive Officer of Public Advocates, Inc., a non-profit advocacy group based in San Francisco. She stated that Public Advocates focuses on education, housing, and transit justice for low-income people. She stated that she was a graduate of Harvard Law School and Barnard College. She stated that she has served as general counsel for United States Department of Education and had been President of Skidmore College. She stated that she had served on several boards prior to the Ethics Commission and had been sitting on the Commission for five years.

All four Commissioners present voted in favor of Chairperson Studley becoming Vice-Chair of the Ethics Commission for the next year. Chairperson Studley stated that the change in leadership would go into effect at the next meeting (*Editor's note: effective March 1, 2011*).

**VI. Closed session.**

Chairperson Studley stated that there are some matters that are meant to be confidential that the Commission hears in closed session.

**Motion 11-02-14-2 (Ward/Hur): Moved, seconded and passed (4-0) that the Commission enter into closed session.**

Public Comment:

None.

[Entered CLOSED SESSION at 6:07 PM.]

[Break at 7:31 PM.]

[Return from break at 7:38 PM.]

[Returned from CLOSED SESSION at 7:54 PM.]

**VII. Discussion and vote regarding closed session action and deliberations.**

**Motion 11-02-14-3 (Hur/Ward): Moved, seconded and passed (4-0) that the Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: anticipated and existing legislation.**

Public Comment:

None.

**VIII. Minutes of the Commission's regular meeting of January 10, 2011.**

Chairperson Studley stated that she had one amendment to the minutes, regarding the first public comment under Item II of the agenda. She stated that the last sentence on the bottom of page 1 should be changed and staff agreed to make the appropriate changes.

**Motion 11-02-14-3 (Hayon/Ward): Moved, seconded and passed (4-0) that the Commission adopt the minutes of the Commission's regular meeting of January 10, 2011, as amended.**

Public Comment:

None.

**IX. Executive Director's Report.**

The Executive Director stated that he had provided a copy of an informal advice letter to the Commissioners. He stated that these letters offer no protection to the person seeking the informal advice, since the letters do not require Commission approval. He stated that he would be happy to answer any questions regarding the advice letter.

**X. Items for future meetings.**

Chairperson Studley advised that the Commissioners should advise the Executive Director or the new Chair about any items they wish to hear at a future meeting.

Public Comment:

None.

**XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

**XII. Adjournment.**

**Motion 11-02-14-4 (Hur/Ward): Moved, seconded and passed (4-0) that the Commission adjourn.**

Public Comment:

None.

Meeting adjourned at 8:00 PM.

Respectfully submitted,

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Catherine Argumedo

Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**March 14, 2011 5:30 P.M.  
and AGENDA**

**Room 408 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

GOVERNMENT  
DOCUMENTS DEPT

MAR 10 2011

SAN FRANCISCO  
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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(c), the Commission should grant waivers to Office of Economic and Workforce Development employee Kyri S. McClellan from the one-year post employment communications ban (§3.234(a)(2)) and the ban on compensation from contractors (3.234(a)(3)). A staff report will be available at the Commission office as well as on the Commission website. (Discussion and possible action.)
- IV. Consideration of policy directives to staff regarding possible amendments to the Campaign Finance Reform Ordinance, San Francisco Campaign and Governmental Conduct Code section 1.100 et seq. Staff recommends that the Commission consider modifying and streamlining disclaimer and disclosure requirements for candidates and committees spending funds in local elections and eliminating the overall limit on contributions to all candidates on the ballot in a single election. A staff report on the proposed policy directives will be available at the Commission's office and on its website. (Discussion and possible action.)
- V. Minutes of the Commission's regular meeting of February 14, 2011. (Discussion and possible action.)
- VI. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the budget, the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Discussion.)

- VII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- VIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- IX. Adjournment.

*Know Your Rights Under the Sunshine Ordinance*

*Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Chris Ruston by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [soif@sfgov.org](mailto:soif@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Ruston or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>*

*If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.*

*The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.*

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*This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.*

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*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct. Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics)*

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

BEVERLY HAYON  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: March 9, 2011

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

Re: Request for waiver from post-employment restrictions

## Introduction

Under San Francisco Campaign and Governmental Conduct Code section 3.234(c), Kyri S. McClellan, a project manager at the Office of Economic and Workforce Development ("OEWD"), has requested a waiver from two of the City's post-employment restrictions in order to allow her to work for the San Francisco America's Cup Organizing Committee ("the Committee") and communicate with the OEWD on behalf of the Committee. Ms. McClellan will attend the March 14, 2011 Ethics Commission meeting to answer questions. Because of the unique circumstances presented by Ms. McClellan's request, staff recommends that the Commission grant the waivers.

## Background

Ms. McClellan has been a project manager in the OEWD for the last seven years. For the past 12 months, she has been the day-to-day manager of the City's efforts to secure the America's Cup race. She was a member of the Host City Agreement negotiation team, and she was responsible for organizing community outreach and support for the event. At the end of December 2010, San Francisco was selected to be the host city of the America's Cup sailing race in 2013.

In 2010, the Committee was formed as a non-profit corporation to marshal the private and corporate support necessary for the City to win the campaign to host the 34<sup>th</sup> America's Cup events. The Committee consists of several individuals from the business and private community, and has an honorary committee that consists of many public officials, including federal, state and local elected officials.

On December 14, 2010, the City entered The 34<sup>th</sup> America's Cup Host and Venue Agreement ("Agreement"), an agreement by and among the City, the Committee and the America's Cup Authority, LLC ("the Authority"). Ms. McClellan worked extensively on the Agreement.

Under the Agreement, the Committee is charged with procuring event sponsors to provide \$270 million or more to support the event; securing a \$32 million bond to compensate the Authority in the event the City or Committee fails to perform its obligations; and raising up to \$32 million from private sources to reimburse the City for a portion of its costs, lost revenues, and expenditures. Although the Committee is a separate legal entity and it is possible that its interests may diverge from the City's in particular matters, the primary function of the Committee is to support the City's efforts. In planning and preparing for the America's Cup event, the Committee and the City largely share a unity of interest.

Ms. McClellan has been offered the position of Executive Director of the Committee. If she accepts, she will oversee all of the Committee's activities. The position will require Ms. McClellan to interact regularly with City staff, including employees in her former department, the OEWD, and including possibly attempting to influence the OEWD's decisions regarding the America's Cup event.

#### Relevant Laws, Discussion, and Recommendations

Ms. McClellan seeks a waiver from two provisions in the Government Ethics Ordinance that govern post-employment activities. (The post-employment provisions are reprinted starting on page 5 of this memo.) These provisions are part of the City's post-employment laws that were enacted to protect the integrity of government decision-making by preventing a public official or employee from using his or her influence or knowledge, gained as a public servant, to advance private interests at the expense of the public. When the Ethics Commission proposed the post-employment laws, it recognized that there may be circumstances when the application of the post-employment provisions to specific factual situations is not necessary to protect the integrity of government decision-making. For this reason, the Commission proposed, and the voters adopted, provisions that permit the Commission to grant waivers to individual employees in specified circumstances where the threat to the integrity of City decisions is minimal.

The two separate provisions implicated by Ms. McClellan's request, and staff's recommendations regarding each waiver request, are discussed separately below.

#### A. One Year Restriction on Communicating with Former Department

San Francisco Campaign and Governmental Conduct Code ("SF C&GCC") section 3.234(a)(2) provides:

No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

Section 3.234(a)(2) ensures that a former City employee or officer cannot abuse his or her influence on behalf of a new employer by requiring a one-year “cooling-off” period during which the former officer or employee is prohibited from communicating with his or her former colleagues on behalf of another to influence governmental decisions.

The Ethics Commission may grant a waiver from the one-year post-employment restriction if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage. *See* SF C&GCC § 3.234(c)(1). In making a waiver determination, the Commission may consider: the nature and scope of the communications the individual will have with his or her former department; the subject matter of such communications; the former position held by the officer or employee; the type of insider knowledge that the individual may possess; and any other factors the Commission deems relevant. *See* Ethics Commission Regulation 3.234-4(a)(4).

Staff recommends that the Commission grant Ms. McClellan’s request for a waiver from the one-year post-employment communication ban. There is no indication that Ms. McClellan’s employment with the Committee will create the potential for undue influence or unfair advantage. The Agreement contemplates that the parties involved – the City, the Committee, and the Authority – will work in unison to ensure that the 34<sup>th</sup> America’s Cup is a success not only in terms of an enhanced overall spectator experience, but also in terms of a boost to the Bay Area economy, the creation of new jobs, and improvement to the infrastructure of the Port of San Francisco.

As the Committee’s executive director, Ms. McClellan would communicate on a regular basis with the City, but her communications with the City will likely be made only to advance the purposes set forth in the Agreement. As noted above, the Committee exists primarily to lessen the financial burdens on the City for hosting the 34<sup>th</sup> America’s Cup event. For this reason, the interests of the City and the Committee appear to be aligned. Ms. McClellan’s communications with her former colleagues will not serve to benefit her or any private entity; instead, they will primarily benefit the City.

In her work for the City, Ms. McClellan was active in negotiating the Agreement, in overseeing management of the City’s efforts to host the event, and in organizing community outreach and support for the event. She has been selected to lead the Committee’s efforts henceforth because of her ability to bring to fruition within a short time frame many of the processes that must occur for the event to succeed. Because her work on the Committee will complement the work of her current colleagues in the OEWD—and in essence will promote the efforts of the City—staff recommends that the Commission grant a waiver from the one-year post-employment communication ban.

B. Employment with Parties that Contract with the City

SF C&GCC section 3.234(a)(3) provides:

No current or former officer or employee of the City shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the city within the preceding 12 months where the officer or employee personally and substantially participated in the award of the contract.

Section 3.234(a)(3) ensures that City contracts are awarded on a fair and impartial basis by prohibiting an officer or employee who personally and substantially participates in the award of a contract from obtaining employment with the contracting party for one year.

The Commission may grant a waiver from the ban on employment with City contractors if it finds that the restriction would cause extreme hardship for the individual. *See* SF C&GC Code § 3.234(c)(3). In making this determination, the Commission may consider: the vocation of the individual; the range of employers for whom the individual could work; the steps the individual has taken to find new employment; and any other factors the Commission deems relevant. *See* EC Regulation 3.234-4(a)(5).

It is clear that Ms. McClellan participated personally and substantially in negotiating the Agreement for the City to host the 34<sup>th</sup> America's Cup. She cannot accept employment with the Committee unless the Commission waives the restriction in section 3.234(c)(3). The Commission may grant her waiver request if it determines that imposing the ban would cause extreme hardship for her.

Staff recommends granting the waiver. Although there is no indication that Ms. McClellan will suffer *financial* hardship in the absence of a waiver, she has explained to staff that the denial of a waiver will impose *professional* hardship because of her chosen career path and the unique nature of this opportunity. Ms. McClellan has served as project manager for several City-led campaigns; she has now been given a unique once-in-a-lifetime opportunity to move forward on the specific career path she has chosen for herself. If she takes it, she will be able to pursue her career plans. If she cannot take it, she will suffer a hardship. Ms. McClellan has indicated that there are no other positions available to her that would offer her the same levels of responsibility and allow her to pursue the same kind of opportunity to advance the very policy goals that she has been devoted to achieving in the City. Beyond Ms. McClellan's career aspirations, staff believes that imposing the ban would cause hardship for the other parties involved as well – the Committee will suffer without her at the helm, and the City may suffer if she is not permitted to pursue this opportunity. Accordingly, staff recommends that the Commission grant a waiver from the ban on compensation from City contractors.

**SEC. 3.234. - POST-EMPLOYMENT AND POST SERVICE RESTRICTIONS.**

**(a) All Officers and Employees.**

**(1) Permanent Restriction on Representation In Particular Matters.**

(A) Prohibition. No former officer or employee of the City and County, after the termination of his or her service or employment with the City, shall, with the intent to influence, act as agent or attorney, or otherwise represent, any other person (except the City and County) before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter:

(i) in which the City and County is a party or has a direct and substantial interest;

(ii) in which the former officer or employee participated personally and substantially as a City officer or employee; and

(iii) which involved a specific party or parties at the time of such participation.

(B) Restriction on assisting others. No former officer or employee of the City and County, after the termination of his or her service or employment with the City, shall aid, advise, counsel, consult or assist another person (except the City and County) in any proceeding in which the officer or employee would be precluded under Subsection (A) from personally appearing.

(C) Exception for testimony. The prohibitions in Subsections A and B do not prohibit a former officer or employee of the City and County from testifying as a witness, based on the former officer's or employee's personal knowledge, provided that no compensation is received other than the fees regularly provided for by law or regulation of witnesses.

(2) One-Year Restriction on Communicating with Former Department. No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

(3) Employment With Parties That Contract With The City. No current or former officer or employee of the City shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding 12 months where the officer or employee personally and substantially participated in the award of the contract.

**(b) Mayor, Members of the Board of Supervisors, and their Senior Staff Members.**

**(1) One year restriction on communicating with City departments.** For purposes of the one-year restriction under subsection (a)(2), the "department" for which a former Mayor, a former member of the Board of Supervisors, or a former senior staff member to either the Mayor or a member of the Board of Supervisors served shall be the City and County and the prohibition in subsection (a)(2) shall extend to communications with:

(A) a board, department, commission or agency of the City and County;

(B) an officer or employee of the City and County;

(C) an appointee of a board, department, commission, agency, officer, or employee of the City and County; or

(D) a representative of the City and County.

For the purposes of this subsection, "a former senior staff member to either the Mayor or a member of the Board of Supervisors" means an individual employed in any of the following positions at the time the individual terminated his or her employment with the City: the Mayor's Chief of Staff, the Mayor's Deputy Chief of Staff, a Legislative Aide to a member of the Board of Supervisors or a position that the

Ethics Commission determines by regulation is an equivalent position based on an analysis of the functions and duties of the position.

(2) **City service.** No former Mayor or member of the Board of Supervisors shall be eligible for a period of one year after the last day of service as Mayor or member of the Board of Supervisors, for appointment to any full time, compensated employment with the City and County. This restriction shall not apply to a former Mayor or Supervisor elected to an office of the City and County, appointed to fill a vacancy in an elective office of the City and County, or appointed to a board or commission in the executive branch.

(c) **Waiver.**

(1) At the request of a current or former City employee or officer, the Ethics Commission may waive any of the restrictions in Subsections (a)(1) and (a)(2) if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage.

(2) At the request of a current or former City employee or officer, the Ethics Commission may waive any of the restrictions in Subsections (a)(1) and (a)(2) for members of City boards and commissions who, by law, must be appointed to represent any profession, trade, business union or association.

(3) At the request of a current or former City officer or employee, the Ethics Commission may waive the prohibition in Subsection (a)(3) if the Commission determines that imposing the restriction would cause extreme hardship for the City officer or employee.

(4) The Ethics Commission may adopt regulations implementing these waiver provisions.

(Added by Proposition E, 11/4/2003; Ord. 218-07, File No. 070505, App. 9/21/2007; Ord. 208-09, File No. 090219, App. 9/25/2009)

#### **Ethics Commission Regulation 3.234-4. Waivers**

(a) Requests for Waivers from Post-Employment Restrictions.

(1) Requests for waivers from permanent and one-year bans. Any current or former City officer or employee may submit a request to the Commission for a waiver from the permanent bans on working or advising on particular matters imposed by subsection 3.234(a)(1) or the one-year ban on communicating with former colleagues imposed by subsections 3.234(a)(2). Such requests must be in writing and include information describing the former position held by the officer or employee; the particular matter for which the waiver is sought; the individual's prior involvement in the matter, if any; and reasons why granting a waiver would not create the potential for undue influence or unfair advantage. The individual must also certify that he or she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of his or her former department, board, commission, office, or unit of government.

(2) Requests for waivers of ban on compensation from City contractors. Any current or former City officer or employee may submit a request to the Commission for a waiver from the ban on receiving compensation from certain City contractors imposed by subsection 3.234(a)(3). Such a request must be in writing and include information describing the name and business activity of the potential new employer of the officer or employee; the contracts that the officer or employee personally and substantially participated in awarding to his or her potential new employer during the 12 months prior to the officer's or employee's acceptance of employment or receipt of or entitlement to compensation; the exact nature of the officer or employee's participation in awarding those contracts; and reasons why imposing the restriction in subsection 3.234(a)(3) would cause extreme hardship for the City officer or employee. The City officer or employee must also certify that he or she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of the department, board, commission, office, or unit of government for which the officer or employee served at the time he or she participated in awarding the contract.



(3) Consideration of waiver requests. The Ethics Commission shall consider, at its next regularly scheduled meeting, any request that meets the criteria set forth in subsections (a)(1) or (a)(2) of this Regulation, provided that such request is received at least two calendar weeks in advance of the meeting. The Commission shall not consider at its next meeting any waiver request that does not comply with this deadline. The individual who has requested the waiver, or his or her representative, and a designated representative from the department, board, commission, office or unit of government of the individual, may make a presentation to the Commission supporting or opposing the waiver request. The Commission may set reasonable time limits on such presentations in accordance with the Sunshine Ordinance and the Brown Act.

(4) Approval of waiver requests from permanent and one-year bans. The Commission shall not approve any request for a waiver from the permanent or one-year bans made under subsection 3.234(c)(1) unless the Commission makes a finding that granting such a waiver would not create the potential for undue influence or unfair advantage. In making this determination, the Commission may consider: the nature and scope of the communications the individual will have with his or her former department, board, commission, office, or unit of government; the subject matter of such communications; the former position held by the officer or employee; the type of inside knowledge that the individual may possess; and any other factors the Commission deems relevant.

(5) Approval of waiver requests from ban on compensation from City contractors. The Commission shall not approve any request for a waiver from the ban on receiving compensation from certain City contractors made under subsection 3.234(c)(3) unless the Commission makes a finding that imposing the restriction in subsection 3.234(a)(3) would cause extreme hardship for the individual. In making this determination, the Commission may consider: the vocation of the individual; the range of employers for whom the individual could work; the steps the individual has taken to find new employment; and any other factors the Commission deems relevant.

(b) Waivers for Former Members of Boards and Commissions Who by Law must be Appointed to Represent Certain Professions, Trades, Businesses, Unions or Associations.

(1) Waivers from the permanent and one-year bans. The Ethics Commission may waive the permanent bans on working or advising on particular matters and the one-year ban on communicating with former colleagues imposed by subsections 3.234(a)(1) and 3.234(a)(2) for any member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association. Such waivers may be granted upon the Commission's own initiative; at the request of the appointing authority of a member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association; or at the request of an individual who was appointed or is being considered for appointment to a board or commission to represent a profession, trade, business, union or association.

(2) Process for Granting Waivers. All waivers granted pursuant to subsection 3.234(c)(2) must be made at a public meeting. Requests for waivers made by an appointing authority or a member of a board or commission must be in writing and state the reasons why the waiver should be granted. The Ethics Commission shall consider, at its next regularly scheduled meeting, any waiver request that meets the criteria of this regulation provided that such request is received at least two calendar weeks in advance of the meeting. In making a determination to grant a waiver under this subsection the Commission may consider: the ability of the City to recruit qualified individuals to fill the position in question if the restrictions are not waived; the ability of the commissioner or board member to engage in his or her particular vocation if the restrictions are not waived; and any other factors the Commission deems relevant.

(c) Notice. The Commission shall maintain a list of waivers granted under subsection 3.234(c) and post the list on the Commission's web page.





February 28, 2011

JOHN ST. CROIX  
Executive Director  
SAN FRANCISCO ETHICS COMMISSION  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Dear Director St. Croix,

I am respectfully seeking a waiver of Section 3.234(a)(2) and Section 3.234(a)(3), two of the Post-Employment restrictions set forth in the City's Campaign and Governmental Conduct Code. For the last seven years I have been a project manager in the Office of Economic and Workforce Development (OEWD). For the last twelve months I have been the day-to-day project manager of the City's America's Cup effort. I was a member of the Host City Agreement negotiation team, as well as responsible for organizing the community outreach and support. The City's successful America's Cup bid has brought a new and unique professional opportunity for me, which I would need a waiver to accept.

The San Francisco America's Cup Organizing Committee (SFACOC), a newly formed local non-profit organization, was conceived by the Mayor's Office last fall and established to support the City and County of San Francisco in preparing for and hosting the 34th America's Cup. Members of the SFACOC include a range of business and community leaders. The SFACOC is also a unique City partner, in that many local, state and federal officials are members of the SFACOC Honorary Committee, including Mayor Lee, the Board of Supervisors, Senator Dianne Feinstein, and Representative Nancy Pelosi. Close coordination between the SFACOC and City staffs will be critical to the success of the 34<sup>th</sup> America's Cup. The SFACOC is also one of the three parties in the Host City Agreement, along with the City and the independent and also newly created America's Cup Event Authority (ACEA).

The SFACOC Executive Committee has offered me the position of Executive Director of the Organizing Committee, for which I would receive a salary. As the Executive Director, my duties would include oversight of all of the SFACOC's activities. The SFACOC's purpose is to lessen the financial burdens on the City and County of San Francisco of preparing for and hosting the 34th America's Cup, through the engagement and contribution of the corporate and philanthropic communities. The SFACOC will partner with the America's Cup Event Authority (ACEA) to raise \$200 million in corporate and community sponsorships as well as philanthropic donations. Up to \$32 million of those funds will be raised to directly offset the City's America's Cup-related expenses. The SFACOC will also work directly with the City and ACEA to ensure the event meets all the objectives in the Host City Agreement including, showcasing the Bay and its resources to the world, sustainability goals, significant economic impacts, and community engagement and opportunities.

Given the purely civic purposes of the SFACOC, and its non-profit status, I believe it would be appropriate for the Commission to grant a waiver of the prohibitions found in Sections 3.234(a)(2) and 3.234(a)(3). With respect to section 3.234(a)(2), it is likely that I will communicate on a regular basis with my OEWD colleagues concerning the America's Cup. I do not believe that my current position at OEWD would confer any undue influence or advantage to myself or the SFACOC, were I to join that organization. The City as a whole, including OEWD, and the SFACOC is already committed to

working together towards a successful America's Cup and it is the City that will be the direct beneficiary of my skills and efforts being further applied to this project.

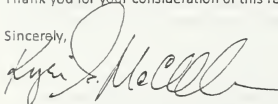
With respect to section 3.234(a)(3), I did participate in the negotiation of the Host City Agreement to which the SFACOC is a party. But the Host City Agreement is not the type of contractual arrangement that is likely the aim of section 3.234(a)(3). The SFACOC exists to facilitate the City in meeting all of the obligations set forth in the contract and to assist the City in paying down expenses related to the America's Cup – it is not receiving any fees or payments from the City for its work. In addition, in the course of working on the Host City Agreement, I had no conversations with the SFACOC, or any of its members, concerning possible future employment with that organization.

As a project manager in the Mayor's Office I have worked on several City-led "campaigns", including the State competition to locate the California Institute for Regenerative Medicine as well as the City's 2016 Olympic bid. Some were successful and some were not. The nature of my work and my career path requires that I seize this moment for advancement. With the America's Cup I am at the crossroads of a unique personal and professional opportunity, and without the waiver I will be stifled by the City, instead of encouraged to build on my City service and move on to greater challenge, which will bear rewards principally to the City.

I humbly submit that my work with the Organizing Committee will be to the City's greater benefit and respectfully request a waiver of the post-employment restrictions discussed above. I have provided a copy of this request to Jennifer Entine Matz, Director of the Office of Economic and Workforce Development, and I welcome the opportunity to answer any questions about this request. I hope to have this issue resolved at your earliest convenience and am prepared to attend the March 14<sup>th</sup> Ethics Commission meeting.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyri McClellan", written over a light blue horizontal line.

Kyri McClellan



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIE S. S. STUDLEY  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

BEVERLY HAYON  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: March 10, 2011

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

A handwritten signature in dark ink, appearing to be "John St. Croix", is written over the "By:" line of the letterhead.

Re: Proposed Amendments to the Campaign Finance Reform Ordinance

Based on its administration of the Campaign Finance Reform Ordinance ("CFRO" or "the Ordinance"), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq. ("C&GC Code"), staff recommends that the Commission consider several policy issues to provide guidance to staff before staff moves forward on proposals to amend the CFRO. Staff has requested that the City Attorney's Office draft legislation and plans to convene at least one interested persons meeting in order to gather public comment on the proposed legislation in the next month. We hope to be able to provide draft legislation to the Commission for consideration at its April and/or May meetings.

Under section 1.103 of the CFRO, the Commission and the Board of Supervisors may amend the CFRO without voter approval if (1) the amendment furthers the purposes of the law; (2) the Ethics Commission approves the proposed amendment by at least a 4/5 vote of all its members; (3) the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board or any of its committee; and (4) the Board approves the proposed amendment by at least a 2/3 vote of all of its members.

Staff's proposed changes, if enacted, would go into effect for the 2012 election, and would not change the rules in the middle of the game for candidates and committees active in the November 2011 election.

### 1. Disclaimer and Disclosure Requirements for Communications by Third Parties

First, staff proposes amending several sections of the CFRO to consolidate the disclosure and disclaimer requirements that apply to third parties. Currently, third parties that spend money in San Francisco elections must navigate a number of different filing requirements—they must file one type of disclosure for "electioneering communications" within 90 days of an election (as set forth in CFRO section 1.161.5); another disclosure for communications that support or oppose a candidate for the Board (section 1.152(b)(2)); a third for communications that support or oppose a candidate for Mayor (section 1.152(b)(3)); a fourth for communications that support candidates for

other local office (section 1.134(c)); and a fifth for communications sent by mail to 200 or more recipients (section 1.161(b)). These filings provide important information to the public and enable Commission staff to track contributions and expenditures to determine whether to lift the voluntary expenditure ceilings and administer the public financing program. But the requirements have become unwieldy and burdensome for staff, the filers and the members of the public who seek to review and use the information disclosed in the filings. Approximately 18 of the CFRO's sections or sub-sections address third-party filing requirements, and the Third Party Disclosure Form is now *eleven* pages long.

Third parties also are subject to a number of different requirements to include "paid for by" disclaimers in those communications—one disclaimer rule applies only to items sent by mail (section 1.161(b)), another to electioneering communications issued within 90 days of an election, a third to advertisements (section 1.162), and a fourth to recorded phone messages (section 1.163).

Staff proposes eliminating this tangled mess and replacing it with a simpler disclosure and disclaimer rule that would require certain disclosures and disclaimers in three situations: races for Mayor or the Board of Supervisors involving a publicly financed candidate, races for other elective offices where at least one candidate has accepted the voluntary expenditure ceiling, and all races within 90 days of election day. Because of the different policy considerations in those three situations, staff would propose setting different triggers for required filings in each. For instance, in races involving a publicly financed candidate where staff needs to track spending in small increments to raise candidates' spending caps, the proposal would require third parties to file reports every time they spend \$5,000 on a communication – even several months before election day. But in races where no candidate is subject to a spending cap and the staff does not need to monitor spending closely, the public need for disclosure of third party spending is more acute closer to the election, so staff would propose requiring no such filings until 90 days before election day.

## **II. Disclaimer and Disclosure Requirements for Communications by Candidate Committees**

Second, staff proposes amending several sections of the CFRO to consolidate the disclaimer requirements that apply to communications paid for by candidates for local office. The CFRO currently applies a number of different disclaimer rules to candidates for local office. Under current law, candidates must indicate that they paid for communications by making disclaimers on communications sent by mail to 200 or more recipients (section 1.161), on campaign advertisements (section 1.162), and on recorded telephone messages (section 1.163). (The CFRO also requires disclosure reports for candidates at certain thresholds, but staff does not propose changing those requirements at this time.)

Like the third-party disclosure/disclaimer rules, the disclaimer requirements for candidates should be consolidated into a single section. This consolidation would help candidates comply with the law.

### **III. Cumulative Contribution Limits**

The CFRO currently provides a \$500 per candidate contribution limit, which staff does not propose amending. But the CFRO also provides that no person may contribute cumulatively to all candidates more than \$500 times the number of offices on the ballot. Staff proposes eliminating this latter limit because it is difficult for candidates to monitor and has arbitrary effects. In an even-numbered year like 2010, when 13 City elective offices were on the ballot (Public Defender, Assessor, three Community College Board members, three School Board members and five Board of Supervisors members), the cumulative contribution limit was \$6,500. Any individual could contribute as much as \$6,500 to candidates, even if the contributor focused his or her donations in one or two races by, say, giving six \$500 contributions to different candidates in a single race. In 2011, with three offices on the ballot, the cumulative limit will be \$1,500. This law is arbitrary because it limits contributions in any given race based on the entirely irrelevant matter of how many *other* races are on the ballot that year. Moreover, it is exceedingly hard for candidates to comply with the rule in the middle of a race because they cannot easily or effectively monitor how much their donors have contributed to other candidates in other races. Both candidates and contributors are subject to penalties when a contributor exceeds the cumulative limit, which is unfair to candidates who often have no way of knowing whether a contributor has exceeded the contribution limit by donating to other candidates. Staff proposes eliminating the cumulative limit.







# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

### EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of March 14, 2011

BENEDICT Y. HUR  
CHAIRPERSON

AMENNE S. STUDLEY  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

BEVERLY HAYON  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

#### 1. Budget.

The Commission has submitted its budget for FY 2011/12. As discussed and approved by the Commission at the last meeting, the request is for an operating budget of \$2,250,000 and \$2,000,000 for the Election Campaign Fund. The Mayor is expected to submit its budget to the Board of Supervisors on June 1. At this time, the Board of Supervisors is expected to consider the Commission's budget on June 20 and 27. I will be working closely with both the Mayor and the Board regarding the Commission's budget. On March 9, I testified before the Budget and Finance Committee regarding legislation to appropriate \$1.3 million from the City's General Fund to the Election Campaign Fund.

#### 2. November 8, 2011 Election.

Two candidates have been certified as eligible to receive public funds. The Commission has disbursed \$50,000 to each of these two candidates.

Candidates for Mayor who are interested in seeking public funding may submit an application for public funds beginning February 8. In order to receive public funds, an interested candidate must demonstrate, among other things, that he/she has received at least \$25,000 in qualifying contributions from at least 250 individuals who reside in the City.

#### 3. Investigation and enforcement program.

Since its last regular meeting on February 14, 2011, the Ethics Commission has received no new complaints. There are 29 pending complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	10
Conflict of Interest	5
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	12
<b>TOTAL</b>	<b>29</b>

#### 4. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline occurred on January 31, 2011 for the Second Semi-Annual statement, which covers through the reporting period ending December 31, 2010. On February 24, 12 committees were sent a Second Non-Specific Written Notice and posted to the Commission's Non-Responsive Filers List. As of March 7, only four of these committees remain non-responsive.

The next filing deadline that applies to all committees falls on August 1, 2011 for the First Semi-Annual statement, which covers the reporting period ending June 30, 2011. In the interim, staff continues to receive and process campaign statements for other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations.

b. Collection of late filing fees and contribution forfeitures. In the FY 10-11, as of February 28, the Commission collected a total of \$34,745 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$130,344, of which waiver requests are pending for \$93,080; and \$21,097 is pending at the Bureau of Delinquent Revenues.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on pending accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnnie Carter for Community College Board	1226264	Johnnie Carter	6/16/06	\$9,520	\$6,595	\$6,595
2	Barbara Lopez for School Board	1312265	Mika Cade	10/12/10	\$350	\$350	\$0
3	Committee to Elect M. Valle for Treasurer	1278937	Manuel B. Valle	6/14/07	\$5,525	\$5,525	\$5,525
4	Bill Barnes for District 5	1265969	Alix Rosenthal	1/3/08	\$3,120	\$1,041	\$1,041
5	Care Not Cash	1244505	Ronald Jin	2/29/08	\$5,331	\$2,731	\$2,156
6	Omar Khalif for Board of Educ.	1287030	Omar Khalif	7/30/09	\$1,800	\$1,775	\$1,775
7	Myrna Lim for District 11 Sup	1306882	Myrna Lim	7/30/09	\$1,180	\$1,180	\$1,180
8	Myrna Lim for District 11 Sup	1256697	Jia Jun Chen	8/20/07	\$3,855	\$2,775	\$2,775
9	San Francisco Women's Political Committee	1243711	Giselle Barry	5/16/06	\$1,906	\$50	\$50
						TOTAL	\$21,097

##### **5. Revenues report.**

For FY 10-11, the Commission is budgeted to generate \$78,000 in revenues. As of March 8, 2011, the Commission received and deposited \$90,335 as summarized below. The figure represents collection of approximately 116 percent of expected revenues for FY 10-11. Revenues received and deposited as of March 8, 2011:

Source	Budgeted Amount FY 10-11	Receipts
Lobbyist Fees	\$8,000	\$35,500
Other Ethics General	\$1,000	\$307
Campaign Finance Fines	\$50,000	\$34,582
Campaign Consultant Fees	\$15,000	\$14,450
Lobbyist Fines	\$1,000	\$2,050
Statements of Economic Interests Fines	\$1,000	\$70
Other Ethics Fines	\$1,000	\$1,076
Campaign Consultant Fines	\$1,000	\$2,300
Total	\$78,000	\$90,335

On February 22, 2011, staff launched an on-line payment system. Registration fees, late fees, penalties, and settlements can now be paid by credit card, debit card, or e-check on the Commission's web site.

##### **6. Draft regulations related to complaints regarding Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force.**

The Sunshine Ordinance Task Force (SOTF) has informed the Commission that its review of draft regulations related to the handling of complaints regarding alleged violations of the Sunshine Ordinance and referrals from the SOTF continues. The SOTF anticipates that it will complete its work sometime this spring.

##### **7. Lobbyist program.**

As of March 7, 2011, 66 individual lobbyists were registered with the Commission. In FY 10-11, total revenues collected to date amount to \$37,550, which consist of \$35,500 in lobbyist registration fees and \$2,050 in fines. The February 2011 reporting period deadline is March 15, 2011.

##### **8. Campaign Consultant program.**

As of March 8, 2011, 27 campaign consultants are active and registered with the Commission. \$14,450 in registration fees and \$2,300 in late fines have been collected during the 2010-2011 fiscal year. The next campaign consultant quarterly report deadline is Tuesday, March 15, 2011. Staff has mailed reminder notices to all active campaign consultants. Staff has also sent an additional e-mail reminder one week prior to the deadline.

**9. Statement of Economic Interests program.**

On February 1, 3, 9, 10, 14, 18, 28, and March 7, staff facilitated 15 Filing Officer SEI Trainings.

**10. Outreach and Education.**

On February 25, staff posted the following web trainings videos:

- Governmental Ethics Ordinance Training for City Employees (revised version)
- Public Utilities Commission SIA Training
- Department on the Environment SIA Training
- Medical Examiner's Office SIA Training

On February 28, staff met with a delegation of 20 inspectors and officials from Zhengzhou City, China. The group, which oversees anti-corruption programs, was in the City to discuss the Commission's anti-bribery and ethics rules and investigations.

On March 4, staff met with a delegation of nine officials from Fujian Province, China, who were in the U.S. to participate in a three-week training program to learn about open government, transparency, and ways to prevent corruption.

On February 23, staff provided training to the Commission on the Status of Women on government ethics and the Statement of Incompatible Activities Training for the Commission on the Status of Women.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments.

The following are the currently scheduled trainings for 2011:

- Candidates' Training: January 27, April 12, June 23, and August 9
- Non-Candidate Recipient Committee Training: web training available online
- SIA Training for the Department of Building Inspection: web training available online
- SIA Training for the Department on the Environment: March 9
- SIA Training for the Planning Department: May 17 and June 14

Respectfully submitted,

  
\_\_\_\_\_  
John St. Croix  
Executive Director

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Minutes of the Regular Meeting of  
The San Francisco Ethics Commission

March 14, 2011  
Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 5:35 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamiene Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Charles Ward, Commissioner. Commissioner Hansen was excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Garrett Chatfield, Investigator/Legal Analyst

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney.

OTHERS PRESENT: Kyri McClellan, Judson True, Nicole Wheaton, Ray Hartz, Anita Mayo, Kevin Hennegan, Shirley Hanson, Richard Hanson, David Pilpel, and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Memorandum from the Executive Director re: Request for waiver from post-employment restrictions, dated March 9, 2011.
- Memorandum from the Executive Director re: Proposed Amendments to the Campaign Finance Reform Ordinance, dated March 10, 2011.
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission on March 14, 2011.
- Executive Director's Report to the Ethics Commission for the Meeting of March 14, 2011.

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

David Pilpel recognized Commissioner Hansen's service on the Ethics Commission.

Shirley Hanson stated that the requirements to report campaign finance disclosures are onerous.

Ray Hartz stated that he submitted a statement in January to be included in the minutes. He stated that the statement should have been typed into the minutes and not attached at the end of the minutes. He also stated that in the online version of the minutes his statement must be accessed by clicking another link. He stated the Good Government Guide is not a legal opinion. [Mr. Hartz also submitted a written statement which has been included at the end of these minutes.]

**III. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(c), the Commission should grant waivers to the Office of Economic and Workforce Development employee Kyri S. McClellan from the one-year post employment communications ban (section 3.234(a)(2)), and the ban on compensation from contractors (section 3.234(a)(3)).**

Executive Director St. Croix summarized the waiver request for the Commissioners.

Ms. McClellan stated that she worked as the project manager for the America's Cup Task Force in the Office of Economic and Workforce Development. She stated that she was offered a position with the non-profit America's Cup Organizing Committee charged with raising money to assist the City to fund the event.

Nicole Wheaton stated on behalf of the Mayor that Ms. McClellan was an essential team member securing the America's Cup bid for the City. She stated the America's Cup Organizing Committee will work with the City to secure funding for the event.

Judson True, legislative aide to Board of Supervisors President Chiu, stated that President Chui supported the waiver request, and that Ms. McClellan's work with the Organizing Committee will greatly benefit the City.

Commissioner Ward stated that the memorandum indicated that Ms. McClellan would endure a professional hardship if the waiver was denied, and asked her about her career path.

Ms. McClellan stated that as part of her past project management experience, she was able to secure other beneficial contracts for the City and this opportunity allows her to pursue a similar civic service in the private sector.

Commissioner Ward asked whether Ms. McClellan intended to return to City service.

Ms. McClellan stated she could not rule out returning to a position with the City.

Vice-Chairperson Studley stated that the Ethics Commission must balance the justification of a waiver against the public policy of why the rule exists. She stated that she was concerned that aspects of this position could violate the provisions the law was intended to prevent, including an insider knowledge of the City during contract re-negotiations.

Ms. McClellan stated that she was one member of a large team, any one of whom would have the same information as she would.

Commissioner Ward stated that he is primarily concerned with the possibility of Ms. McClellan returning to City service. He stated that she might return to the City supervising employees with whom she engaged in communications while in private service and that could have some undue influence.

In response to Chairperson Hur, Ms. McClellan stated that the City would not make any payments to the Organizing Committee, and that the Organizing Committee is tasked with securing funds for the City to offset the costs of the America's Cup event. She also responded to Chairperson Hur that she was not offered the position until after the contract negotiations were completed. She further stated that the Organizing Committee cannot re-negotiate the contract, but the City has the ability to terminate the Contract if the Organizing Committee fails to complete its obligations. She stated that the City has no monetary obligations to the Organizing Committee.

Chairperson Hur stated that the risks normally present with other contractors is not present here, as the City has no monetary obligations to the Organizing Committee.

Vice-Chairperson Studley stated that Ms. McClellan's knowledge may give the contractor other advantages apart from monetary. She also stated that the public nature of this event might prevent any undue influence from occurring.

Executive Director St. Croix responded to Chairperson Hur that no other City employee has invoked a professional hardship as the basis for the waiver request.

Deputy Executive Director Ng clarified the hardship exemption is used for the contracting ban.

Commissioner Hur stated that the Commission can define hardship more broadly.

Commissioner Ward stated that he did not think the hardship Ms. McClellan would suffer if denied the waiver was extreme, and that he was concerned about the precedent that would be set by a broad definition.

Mr. True stated that the Organizing Committee is a different entity from the Event Committee. He stated that the Event Committee is tasked with making infrastructure investments and the possibility for contract re-negotiation exists with that entity. He stated that between the City and the Organizing Committee the obligations all flow from the Committee to the City and that the City has no obligations to the Committee. He further stated that the City and Organizing Committee have the common goal of securing funds to hold the event.

**Motion 11-03-14-1 (Studley/Hayon): Moved, seconded and passed (4-0) that the Commission approve the waiver.**

Public Comment:

Ray Hartz stated that he was concerned about what might have been said in private during negotiations.

David Pilpel stated that documents referenced in the memorandum are not available, but supports the waiver. He stated the Commission should charge for waiver requests.



**IV. Consideration of policy directives to staff regarding possible amendments to the Campaign Finance Reform Ordinance, San Francisco Campaign and Governmental Conduct Code section 1.100 et seq.**

Executive Director St. Croix outlined for the Commission that staff would like input regarding possible changes to the Campaign Finance Reform Ordinance.

Vice-Chairperson Studley stated that she appreciated staff's proposals to reduce some of the burden on reporting and that the proposals appear reasonable on balance.

Public Comment:

Richard Hanson stated that small committees have great difficulty with the many disclosure and reporting requirements.

Shirley Hanson stated that to report one slate card can take hours to complete.

Ray Hartz stated that the Citizen's United U.S. Supreme Court case has put a question mark on who is paying for elections.

Anita Mayo complimented staff for its attempt to try and simplify reporting requirements.

Kevin Hennegan suggested that staff hold an interested persons meeting to solicit input. He also suggested that staff consider using state forms rather than local forms for some of the reporting requirements.

David Pilpel stated that he thought reporting requirements should be streamlined but maintain the most transparency possible.

Deputy Executive Director Ng stated that an interested person meeting will be held on March 24, 2011.

**V. Minutes of the Commission's regular meeting of February 14, 2011.**

**Motion 11-03-14-2 (Ward/Hayon): Moved, seconded and passed (4-0) that the Commission adopt the minutes of the Commission's regular meeting of February 14, 2011.**

Public Comment:

None.

**VI. Executive Director's Report.**

Executive Director St. Croix stated that the April and May meetings will probably be slightly longer. He stated that he recently attended the budget meeting regarding the public financing campaign fund. He stated two candidates have already qualified for public financing.

Public Comment:

David Pilpel stated that the Commission should include in the Executive Director's report a list of items for future meetings.

**VII. Items for future meetings.**

Executive Director St. Croix stated that the Commission will put an agenda item on a future meeting regarding priorities.

Public Comment:

None.

**VIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

Ray Hartz stated that he received a dismissal letter from a complaint on November 15, 2010. He stated that part of the justification was reliance on the Good Government Guide. He stated that the Good Government Guide is not a law and cannot be used as a justification to ignore a law. [Mr. Hartz also submitted a written statement which has been included at the end of these minutes.]

**IX. Adjournment.**

**Motion 11-03-14-3 (Studley/Hayon): Moved, seconded and passed (4-0) that the Commission adjourn.**

Public Comment:

None.

Meeting adjourned at 7:01 PM.

Respectfully submitted,

---

Garrett Chatfield



This summary statement was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.

I would like to compliment the Ethics Commission staff on being, as the British would say, too clever by half! At the commission meeting of January 10, 2011, I submitted a 150 word summary and asked that it be included "in the minutes" in accordance with the Sunshine Ordinance. That statement did appear attached to the draft minutes of the meeting. Today, I visited the Ethics Commission website read and printed out a copy of the approved minutes. I was not very surprised to see my statement missing. Only upon careful review, did I notice a link to the statement. A link, which most members of the public would not realize was there, and as a result, would not see the statement. What is it that this body, tasked with enforcing the Sunshine Ordinance, fears in simply enforcing the law as written? Could it be they fear the public?

This summary statement was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.

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I am in possession of a November 15, 2010 response to an Ethics Commission complaint filed October 19, 2010. The complaint was dismissed on two points from the Good Government Guide. I would like to quote from the same source: "So please be prudent, understand that no publication can substitute for the careful consideration of the application of laws to specific conduct." This is from page 1 of the introduction, signed by the City Attorney. Using the good Government guide as a justification for ignoring the actual wording of a law is at best disingenuous and at worst outright dishonest. Also, trying to imply a difference in application of the Sunshine Ordinance, with respect to bodies which are or are not enumerated in the charter, is even more suspect. The agendas of every City policy body, enumerated in the charter or not, state "Know Your Rights Under the Sunshine Ordinance."

Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**April 11, 2011 5:30 P.M.**

**and AGENDA**

**Room 408 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Consideration of legislation to amend San Francisco Campaign and Governmental Conduct Code section 3.234 to allow an appointed former Mayor to obtain full-time City employment within one year of leaving Mayoral office. The Commission will consider legislation authored by several members of the Board of Supervisors to amend section 3.234 to permit such action, plus a proposed amendment by staff to extend the exception to appointed members of the Board of Supervisors. The legislation and a staff report are available at the Commission office as well as on the Commission website. (Discussion and possible action.)
- IV. Consideration of letter to Dr. Judy Melinek, including formal written advice, regarding section III.B.3 of the Statement of Incompatible Activities of the General Services Agency, which prohibits employees of the Office of the Chief Medical Examiner from providing expert testimony in judicial proceedings unrelated to their official duties unless such employees receive an advance written determination that they may do so. The draft letter is available at the Commission office as well as on the Commission website. (Discussion and possible action.)
- V. Staff presentation of public finance report. After each election cycle involving publicly-financed races, staff makes a report on execution of the public financing program for that election cycle. At this meeting, staff will present a report on the 2010 election cycle. The report is available at the Commission office as well as on the Commission website. (Discussion and possible action.)
- VI. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 (a) and (c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

- VII. Discussion and vote regarding closed session action and deliberations. (Discussion and possible action.)
- Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.
- Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.
- VIII. Minutes of the Commission's regular meeting of March 14, 2011. (Discussion and possible action.)
- IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the budget, the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Discussion.)
- X. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- XII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

*Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Chris Rustom by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [soif@sfgov.org](mailto:soif@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Rustom or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>*

*If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.*

*The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.*

*This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.*

*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics)*





# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

MIENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: April 6, 2011

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Mabel Ng, Deputy Executive Director

A handwritten signature in black ink, likely belonging to Mabel Ng, is written over the "By:" line.

Re: Legislation to amend one-year post-employment restriction

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The City's Campaign and Governmental Conduct Code prohibits the Mayor and members of the Board of Supervisors (the "Board") from obtaining any City employment within 12 months after leaving elective office. This rule is designed to restrict these elected officials from using their influence to create golden parachutes as they leave office. In January 2011, seven members of the Board introduced legislation to create an exception to the no-City-employment rule, permitting a former Mayor to seek City employment if (1) the Mayor was appointed to that office to fill a vacancy, and (2) the Mayor did not subsequently run for election to keep the office. Staff recommends that in considering the legislation, the Commission also consider whether the same exception should apply to a former member of the Board of Supervisors in similar circumstances. A representative of Supervisor David Chiu's office will attend the Commission's April 11, 2011 meeting to respond to questions.

Section 3.234(b)(2) is a part of the Governmental Ethics Ordinance (GEO), which may be modified without voter approval if the amendment furthers the purposes of the GEO, the Ethics Commission approves the amendment by at least a 4/5 vote of all its members, the amendment is available for public review at least 30 days before it is considered by the Board, and the Board approves the amendment by at least a 2/3 vote of all its members. *See* S.F Campaign & Governmental Conduct Code (C&GC Code) § 3.206.

### Discussion

All City officers and employees, including the Mayor and members of the Board, are subject to a number of post-employment restrictions, including a one-year ban on lobbying their former departments and a one-year ban on working for certain City contractors. (The Commission considered waivers regarding both of these post-employment rules at last month's meeting.) The GEO includes two special post-employment rules that apply to the Mayor and members of the Board. For one year after leaving City service, these officials (and their senior staff) are prohibited from lobbying *any* City department, board or commission on anyone's behalf. *See* C&GC Code § 3.234(b)(1). And, most relevant here, the Mayor and members of the Board are

not, for a period of one year after their last day of service, eligible for appointment to any full-time, compensated employment with the City. See C&GC Code § 3.234(b)(2). There is no waiver available from this prohibition on employment.

The proposed legislation was introduced on January 11, the same day that the Board appointed Mayor Ed Lee to serve out the last year of Mayor Newsom's four-year term. Prior to assuming office, Mayor Lee was the City Administrator, the department head of the General Services Administration, which consists of 20 departments, divisions, offices and programs, and 656 full-time employees. The City Administrator is a full-time, compensated position appointed by the Mayor, subject to confirmation by the Board. See Charter § 3.104. Under current law, Mayor Lee would be precluded from returning to the City Administrator post – or any other City employment – for one year after he steps down as Mayor.

Under the proposal, the one-year restriction on City service under section 3.234(b)(2) would not apply to a former Mayor who (1) was appointed to the office of the Mayor to fill a vacancy and (2) did not subsequently file a declaration of candidacy to seek election to that same office. The proposal would allow Mayor Lee to return to City employment after his tenure as Mayor and would apply to future appointed Mayors in the same circumstances.

Staff recommends that the Commission approve the legislation. Because of the frequency of local elections, individuals who are appointed to fill vacancies in the office of Mayor or Supervisor usually serve less than a year in office and never more than a year and a half. The proposed exception to the ban on employment would apply only if the individual does not take out papers to run for that office. These two factors tend to show that such individuals are occupying only caretaker positions. As demonstrated in the recent search for an interim Mayor, the pool of qualified candidates who are willing to accept a one-year appointment could consist largely of current City employees. And those candidates would be less likely to accept the appointment without some assurance that they could return to their former jobs (or some public employment) after the end of the caretaker term. For example, press reports suggest that Mayor Lee was recruited for the appointment and accepted it reluctantly. One of the concerns he apparently expressed about taking the position was that he might not be able to return to his long-term City employment at the end of the year.

If the Commission approves this legislation, staff recommends that the Commission also extend the exception to a member of the Board of Supervisors in the same circumstances – that is, an individual who (1) was appointed to the Board to fill a vacancy and (2) did not subsequently file a declaration of candidacy to seek election to that same office. Staff makes this recommendation because the same arguments supporting an exception for appointed Mayors like Mayor Lee apply equally to appointed members of the Board. Two members of the current Board (Supervisors Elsbernd and Chu) were members of City staff when the Mayor appointed them to fill vacancies on the Board (in 2004 and 2007, respectively). Both of them later ran to keep the office, bringing them outside the scope of the proposed exception. But had they chosen not to run, and to return to City service after their appointed service, they would have been precluded from doing so, just as Mayor Lee would be today. A proposed draft of the legislation incorporating staff's proposals is attached behind the draft legislation currently at the Board.

## LEGISLATIVE DIGEST

[Campaign and Government Conduct Code - Allowing former appointed Mayor to obtain City employment]

**Ordinance amending San Francisco Campaign and Governmental Conduct Code Section 3.234 to allow an appointed former Mayor to obtain full-time City employment within one year after leaving office.**

### Existing Law

Under current law, a person who has served as Mayor, whether by election or appointment, may not be appointed to any full-time compensated employment with the City for one year after the last date of service as Mayor.

### Amendments to Current Law

This legislation would provide an exemption from the ban against the appointment of a former Mayor to full-time employment with the City for one year after the last day service as Mayor. The exemption would be limited to persons appointed pursuant to Charter Section 13.101.5 to fill a vacancy in the Office of Mayor and who do not subsequently file a declaration of candidacy for election to that office.

### Background Information

The proposal amends Article III, Chapter 2 of the Campaign & Governmental Conduct Code (the "Government Ethics Ordinance" or "GEO"). The GEO, which was originally approved by the voters, expressly authorizes amendment by the Board of Supervisors only if:

- 1) the amendment furthers the purposes of the GEO;
- 2) the amendment is approved by the members of the Ethics Commission by a four-fifths vote;
- 3) the legislation is made available for public review for at least 30 days before consideration by any committee of the Board of Supervisors ; and
- 4) the Board of Supervisors adopts the legislation by a two-thirds vote.

See S.F. Campaign and Governmental Conduct Code § 3.204.



[Campaign and Governmental Conduct Code - Allowing former appointed Mayor to obtain City employment]

**Ordinance amending San Francisco Campaign and Governmental Conduct Code  
Section 3.234 to allow an appointed former Mayor to obtain full-time City employment  
within one year after leaving office.**

NOTE: Additions are single-underline italics Times New Roman;  
deletions are ~~strike-through italics Times New Roman~~.  
Board amendment additions are double-underlined;  
Board amendment deletions are ~~striketrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby  
amended by amending Section 3.234, to read as follows:

**SEC. 3.234. POST-EMPLOYMENT RESTRICTIONS.**

(a) All Officers and Employees.

(1) Permanent Restriction on Representation in Particular Matters.

(A) Prohibition. No former officer or employee of the City and County, after the  
termination of his or her service or employment with the City, shall, with the intent to influence,  
act as agent or attorney, or otherwise represent, any other person (except the City and  
County) before any court, or before any state, federal, or local agency, or any officer or  
employee thereof, by making any formal or informal appearance or by making any oral,  
written, or other communication in connection with a particular matter:

(i) in which the City and County is a party or has a direct and substantial interest;

(ii) in which the former officer or employee participated personally and substantially as  
a City officer or employee; and

(iii) which involved a specific party or parties at the time of such participation.

1 (B) Restriction on assisting others. No former officer or employee of the City and  
2 County, after the termination of his or her service or employment with the City, shall aid,  
3 advise, counsel, consult or assist another person (except the City and County) in any  
4 proceeding in which the officer or employee would be precluded under Subsection (A) from  
5 personally appearing.

6 (C) Exception for testimony. The prohibitions in Subsections A and B do not prohibit a  
7 former officer or employee of the City and County from testifying as a witness, based on the  
8 former officer's or employee's personal knowledge, provided that no compensation is received  
9 other than the fees regularly provided for by law or regulation of witnesses.

10 (2) One-Year Restriction on Communicating with Former Department. No current or  
11 former officer or employee of the City and County, for one year after termination of his or her  
12 service or employment with any department, board, commission, office or other unit of the  
13 City, shall, with the intent to influence a government decision, communicate orally, in writing,  
14 or in any other manner on behalf of any other person (except the City and County) with any  
15 officer or employee of the department, board, commission, office or other unit of government,  
16 for which the officer or employee served.

17 (3) Employment with Parties that Contract with the City. No current or former officer or  
18 employee of the City shall be employed by or otherwise receive compensation from a person  
19 or entity that entered into a contract with the City within the preceding 12 months where the  
20 officer or employee personally and substantially participated in the award of the contract.

21 (b) Mayor, Members of the Board of Supervisors, and their Senior Staff Members.

22 (1) One year restriction on communicating with City departments. For purposes of the  
23 one-year restriction under Subsection (a)(2), the "department" for which a former Mayor, a  
24 former member of the Board of Supervisors, or a former senior staff member to either the  
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Mayor or a member of the Board of Supervisors served shall be the City and County and the prohibition in Subsection (a)(2) shall extend to communications with:

(A) a board, department, commission or agency of the City and County;

(B) an officer or employee of the City and County;

(C) an appointee of a board, department, commission, agency, officer, or employee of the City and County; or

(D) a representative of the City and County.

For the purposes of this subsection, "a former senior staff member to either the Mayor or a member of the Board of Supervisors" means an individual employed in any of the following positions at the time the individual terminated his or her employment with the City: the Mayor's Chief of Staff, the Mayor's Deputy Chief of Staff, a Legislative Aide to a member of the Board of Supervisors or a position that the Ethics Commission determines by regulation is an equivalent position based on an analyses of the functions and duties of the position.

(2) City service.

(A) Except as provided in Subsection (B), no former Mayor or member of the Board of Supervisors shall be eligible for a period of one year after the last day of service as Mayor or member of the Board of Supervisors, for appointment to any full time, compensated employment with the City and County. This restriction shall not apply to a former Mayor or Supervisor elected to an office of the City and County, appointed to fill a vacancy in an elective office of the City and County, or appointed to a board or commission in the executive branch.

(B) The one-year restriction in Subsection (A) shall not apply to a former Mayor who was appointed to office of Mayor under Charter Section 13.101.5 to fill a vacancy and who did not subsequently file a declaration of candidacy for election to that office.

(c) Waiver.



1 (1) At the request of a current or former City employee or officer, the Ethics  
2 Commission may waive any of the restrictions in Subsections (a)(1) and (a)(2) if the  
3 Commission determines that granting a waiver would not create the potential for undue  
4 influence or unfair advantage.

5 (2) At the request of a current or former City employee or officer, the Ethics  
6 Commission may waive any of the restrictions in Subsections (a)(1) and (a)(2) for members of  
7 City boards and commissions who, by law, must be appointed to represent any profession,  
8 trade, business, union or association.

9 (3) At the request of a former City officer or employee, the Ethics Commission may  
10 waive the prohibition in Subsection (a)(3) if the Commission determines that imposing the  
11 restriction would cause extreme hardship for the City officer or employee.

12 (4) The Ethics Commission may adopt regulations implementing these waiver  
13 provisions.

14 APPROVED AS TO FORM:  
15 DENNIS J. HERRERA, City Attorney

16 By:

17 JON GIVNER  
18 Deputy City Attorney  
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[Campaign and Governmental Conduct Code - Allowing former appointed Mayor or Member of Board of Supervisors to obtain City employment.]

**Ordinance amending Campaign and Governmental Conduct Code section 3.234 to allow an appointed former Mayor or member of the Board of Supervisors to obtain full-time City employment within one year after leaving office.**

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14 APPROVED AS TO FORM:  
15 DENNIS J. HERRERA, City Attorney

16 By: \_\_\_\_\_  
17 JON GIVNER  
18 Deputy City Attorney  
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# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

MIENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

April \_\_, 2011

Judy Melinek, M.D.  
Assistant Medical Examiner  
Office of the Chief Medical Examiner  
850 Bryant Street – North Terrace  
San Francisco, CA 94103

Dear Dr. Melinek:

You have asked for the Ethics Commission's advice regarding whether you paid expert testimony in a judicial proceeding in San Mateo County violates the Statement of Incompatible Activities of the General Services Agency.

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. *See* S.F. Charter § C3.699-12. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice, and if the District Attorney and City Attorney concur in the advice. *See id.* Informal advice does not provide similar protection. *See id.* Your request to the Commission is threefold: (1) you asked that an "exception" to the advance written determination be made to allow you to testify in a civil matter; (2) you assert that the Statement of Incompatible Activities ("SIA") for the General Services Agency is not valid; and (3) you request that the Ethics Commission take action to amend the SIA. Because in request (1) you provided specific facts about a future activity and are seeking advice regarding your duties under the SIA, the Commission is treating it as a request for formal advice. Although requests (2) and (3) are not requests for advice, we will address them in this letter in order to provide you a complete response.

### Background

#### A. Statements of Incompatible Activities

In compliance with the requirements of Proposition E passed by the voters in 2003, the Ethics Commission adopted Statements of Incompatible Activities ("SIAs") for every City department, board and commission. Each SIA identifies outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers and employees of a City department, board, commission or agency. *See* San Francisco Campaign and Governmental Conduct Code ("C&GC Code") § 3.218. The SIA of the General Services Agency ("GSA") covers all officers and employees of GSA, including the

Office of the Chief Medical Examiner (“OCME”). In 2007 and 2008, the Ethics Commission adopted SIAs for 53 departments, boards and commissions after nearly two years of meet and confer sessions with the City’s public employee labor unions. All SIAs took effect on October 8, 2008.

Section III of the SIA prohibits outside activities, including self-employment, that are incompatible with the mission of GSA. Subsection III.A sets forth restrictions that apply to all officers and employees of GSA. Subsection III.B identifies additional restrictions that apply only to officers and employees in specific positions. The section most relevant to your request is subsection III.B.3, which establishes the following restriction regarding officers and employees of the OCME:

*No officer or employee of the Office of the Chief Medical Examiner Division may provide expert testimony in a civil or criminal judicial proceeding unrelated to job duties, except as authorized by an advance written determination pursuant to subsection C of this section by the Chief Medical Examiner or his or her designee.*

Additionally, section III.A.2 prohibits employees from engaging in activities with excessive time commitments that would interfere with the employees’ duties.

Under the SIA, any officer or employee may seek an advance written determination (“AWD”) as to whether a proposed outside activity conflicts with the mission of the GSA, imposes excessive time demands, is subject to review by the GSA, or is otherwise incompatible and therefore prohibited by section III of the SIA. An AWD by a decision-maker that an activity is *not* incompatible provides the requestor immunity from any subsequent enforcement action for any alleged violation of the SIA if the material facts are as presented in the requestor’s written submission. The decision-maker for an employee at the GSA is the director of the GSA, who is also the City Administrator. If the City Administrator delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible, then the employee may appeal the determination to the City Administrator. This is the only appeal right set forth in the SIA.

Separately, as noted above, the San Francisco Charter authorizes any person to seek a written opinion from the Ethics Commission with respect to that person’s duties under provisions of the Charter or City ordinances relating to conflicts of interest and governmental ethics, including the SIAs. Any person who acts in good faith on a formal opinion issued by the Commission and concurred in by the City Attorney and District Attorney is immune from criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. An employee may seek written advice from the Ethics Commission regardless of whether the employee also seeks an AWD from the City Administrator or his or her designee. *See* SIA § III.C.1.

## **B. Your Request for an Advance Written Determination**

On December 3, 2010, you sought an AWD as to whether you could provide expert opinion and possible testimony in a wrongful death civil suit in San Mateo Superior Court Case No. CIV



4811542, *Wolkoff v. AMR/County of San Mateo*. The City Administrator designated Dr. Amy Hart, the Chief Medical Examiner, as the initial decision-maker. On December 12, 2010, Dr. Hart determined that the proposed activity was incompatible with the SIA. On or about December 30, 2010, you appealed Dr. Hart's determination to Ed Lee, the City Administrator. On February 1, 2011, Amy Brown, who was appointed Acting City Administrator after Mr. Lee assumed office as Mayor, determined that your proposed activity was incompatible with your duties as an employee of the OCME and would violate the SIA.

By letter dated February 24, 2011, you filed an appeal with the Ethics Commission. On March 9, after Ethics staff informed you that the City Administrator's determination is not subject to appeal under the SIA, you clarified in an email that you are requesting formal written advice from the Commission pursuant to Charter section C3.699-12.

### **Discussion**

In your February 24, 2011 request, you asked for an "exception" to the AWD, you asserted that the SIA of the GSA is not valid because your union representative claims that the union was never provided a copy of the SIA containing the language in section III.B.3, and you requested that the Commission take action to revise section III.B.3. We address each of these requests in turn below.

#### **1. Exception to the AWD**

In your email, you ask the Commission to adopt an "exception" to allow you to testify in the *Wolkoff* case. But the SIA prohibits the proposed activity. Section III.B.3 provides that unless the decision-maker determines otherwise, you as an employee of the OCME may not provide expert testimony in a civil or criminal proceeding unrelated to your job duties. You have proposed to provide expert opinion and possible testimony in a civil matter unrelated to your job duties. This you may not do under the plain language of section III.B.3 unless you obtain an AWD that provides that you may engage in such activity. You sought an AWD, which was denied by the Chief Medical Examiner, and you appealed that decision to the City Administrator, who also denied the AWD. For that reason, the proposed activity is prohibited under the SIA.

In an advice letter, the Ethics Commission cannot change or adopt an exception to the SIA that is inconsistent with the plain language of the SIA. The SIAs may only be amended by a specific process set forth in C&GC Code section 3.218 and the regulations adopted to implement that section. Nor can the Ethics Commission substitute its judgment in an AWD request for the judgment of the authorized decision-maker unless the SIA explicitly provides that authority, and GSA's SIA does not so provide. For this reason, and because the AWD process was followed correctly here, the Commission concludes that the proposed activity described in your request would violate the SIA.

#### **2. Satisfying the Meet and Confer Obligations**

You assert that section III.B.3 of GSA SIA should not apply to you because the SIA was never forwarded to your union, the Union of American Physicians and Dentists ("UAPD"), during the

Ethics Commission's consideration of it. As a consequence, you claim that the City failed to satisfy the meet-and-confer obligations under C&GC Code section 3.218, and the SIA is not legally operative. The records of the Ethics Commission and the Department of Human Resources demonstrate otherwise.

The Ethics Commission first considered the SIA of the GSA at a publicly noticed meeting on June 11, 2007. On June 4, 2007, Ethics staff sent notice of the meeting to representatives of all unions representing affected employees. A copy of the GSA SIA dated June 4, 2007 was attached to the email. Section III.B.3 in that SIA contained the following language: *"No officer or employee of the Office of the Chief Medical Examiner Division may provide expert testimony in a civil or criminal judicial proceeding unrelated to job duties, except as authorized by an advance written determination pursuant to subsection C of this section by the Chief Medical Examiner or his or her designee."* This language is identical to the language that appears in the current version of the GSA SIA.

Ethics staff sent the June 4 email to, among others, two individuals with the UAPD email address, [al@uapd.com](mailto:al@uapd.com) and [pat@uapd.com](mailto:pat@uapd.com). These were the email addresses provided by the union to the City's Department of Human Resources ("DHR") as official contacts for the UAPD. None of the emailed messages bounced back. Contemporaneous with the SIA adoption process in 2007 and 2008, these two individuals communicated with the DHR on behalf of UAPD, using the same email addresses. These two UAPD representatives continue to represent the union and continue to use the same email addresses today. Indeed, one of them is an address you now use to communicate with your union.

On June 11, 2007, the Commission preliminarily approved the GSA SIA at a public meeting in City Hall. No representative from UAPD attended and spoke at that meeting.

The Ethics Commission's preliminary approval was only the first step in the adoption of GSA's SIA. Before final adoption, the law required the City to satisfy meet and confer obligations. DHR scheduled meet and confer discussions for September 21, 2007 about the GSA SIA with miscellaneous unions, including the UAPD, that represent employees at GSA. Prior to that date, on August 20, 2007, DHR sent notice of the meeting to the UAPD via an email addressed to the two same email addresses referenced above. DHR has informed the Commission that none of the emailed messages bounced back. On August 21, 2007, DHR also sent notice of the September 21, 2007 meeting via a facsimile to the UAPD at a phone number provided by UAPD for the purpose of fax communications. DHR has a confirmation record that the facsimile was received by UAPD on August 21, 2007 at 8:25 a.m. Both DHR's email and facsimile messages explained that any union that was unable to meet and confer on the scheduled date could contact DHR to request another time to meet; otherwise, the City would consider the failure to make such a request or to attend the meeting "an unequivocal waiver of the right to meet and confer on the department's SIA." On September 21, staff from GSA, DHR, the Ethics Commission and the City Attorney's Office attended the scheduled meeting. No representative from the UAPD attended; nor did anyone from UAPD request a different meeting date and time to meet. Prior to final approval of the SIAs, the City held numerous meetings with City unions regarding the SIAs for all departments and provided notice to each union; several unions sent representatives to those meetings.

The Ethics Commission scheduled a meeting to give final consideration to the GSA SIA on November 5, 2007. Prior to that date, on October 26, 2007, Ethics staff sent notice about the Commission's meeting to, among others, the UAPD via email to the two same UAPD email addresses. Recipients of the notice were informed that a copy of the proposed final SIA was available to the public at the Commission's office and on its website. At a public meeting on November 5, 2007, the Commission finally approved the GSA SIA. Again, no representative from the UAPD attended.

The language of section III.B.3 remained unchanged throughout the process of the Commission's initial consideration of the SIA, the meet-and-confer process, and the Commission's final consideration of the SIA. The City offered the UAPD several opportunities to participate in the process, but the UAPD declined to do so. Because the City provided adequate notice of the meet-and-confer process, it met its meet-and-confer obligations under section 3.218 of the C&GC Code. The SIA is binding on all employees and officers of GSA.

### **3. Amending the SIA**

While the Commission cannot consider an appeal of a decision-maker's determination in an AWD request, the Commission has the authority to amend any SIA. See C&GC Code § 3.218. In drafting the SIAs, the Commission worked closely with the management and employees of each department, recognizing that the department heads often had vital information regarding what outside activities were incompatible with the department's mission. Similarly, in authorizing department heads to approve AWD requests, the Commission recognized that department heads generally are well equipped to determine whether specific outside activities are incompatible, inconsistent or in conflict with the mission of their departments. For this reason, department heads have great latitude in determining whether to grant AWD requests.

In consulting with GSA representatives, the Commission has learned that the City Administrator does not support a change to section III.B.3. The Commission understands that in making advance written determinations regarding this provision, the Chief Medical Examiner and the City Administrator use the following six-question framework:

Q1: Have you been retained to provide, or is it reasonably foreseeable that you will provide, expert testimony in a judicial proceeding, other than in your official capacity as an employee of the Medical Examiner's Office?

Answer to Q1:

*Yes.* Then ask Q2.

*No.* SIA § III.A.3 does not apply; no AWD is required. Employee may engage in the activity.

Q2: Does the case involve a death, injury or incident that occurred in the City and County of San Francisco?

Answer to Q2:

*Yes.* The activity is incompatible. Department Head will deny AWD.

*No.* Then ask Q3.

Q3: Will the case involve a public entity or will the case involve an entity/person that has a professional relationship with the City and County of San Francisco?

Answer to Q3:

*Yes.* Then ask Q4.

*No.* The outside activity is not incompatible. Department Head will grant AWD.

Q4: Does the case involve the interpretation or review of the findings or work of another Medical Examiner, Coroner or a person acting as an agent of the Medical Examiner or Coroner?

Answer to Q4:

*Yes.* Then ask Q5.

*No.* The outside activity is not incompatible. Department Head will grant AWD.

Q5: Would your testimony interfere with the City and County of San Francisco's professional relationship with the other public entity or entity/person in a manner that would disrupt the efficient operations or practices of the City and County of San Francisco?

Answer to Q5:

*Yes.* Then ask Q6.

*No.* Outside activity is not incompatible. Department Head will grant AWD.

Q6: Has any party already relied on your ability to testify in the case based on an agreement you entered into prior to June 2010 to provide such testimony?

Answer to Q6:

*Yes.* Outside activity is not incompatible. Department Head will grant AWD

*No.* Outside activity is incompatible. Department Head will deny AWD.

The Commission believes that such a framework is reasonable and provides guidance as to what outside activities might be considered incompatible or not. The Commission could amend the SIA to incorporate this framework explicitly, but as long as the department consistently applies the framework, as it has done here, there is no need to amend the SIA. The Commission finds the language in section III.B.3 to be precise and clear, not so broad or confusing as to recommend a revision.

Sincerely,

John St. Croix, Executive Director

By: Mabel Ng, Deputy Executive Director

**From:** Judy Melinek/ADMSVC/SFGOV  
**To:** Mabel Ng/ETHICS/SFGOV@SFGOV  
**Cc:** pat@uapd.com, llim@giccb.com, Jon Smith/ADMSVC/SFGOV@SFGOV

---

**Date:** Wednesday, March 09, 2011 02:11PM

**Subject:** SIA/AWD for OCME

History: ✉ This message has been forwarded.

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Per our phone conversation today, where you notified me about the procedure regarding approaching the ethics commission, I am clarifying that I am **requesting advice** from the commission on this case in particular, with the hopes that an exception can be made as there is clearly no conflict of interest for the City & County of San Francisco. As I notified you in an earlier e mail and by phone, the attorney will be filing expert disclosure on Friday and I plan to have them disclose me as a witness, but not schedule me to testify until we have the opinion by the ethics commission. If the hearing process can be expedited, it would clearly help avoid any further delay and potential damages.

I did speak to my UAPD union representation, Patricia Hernandez, and she is adamant that the specific SIA language for our division was never forwarded to UAPD for a meet and confer; she said that they have requested proof from DHR that it was forwarded to them and this proof has never been provided. I suggest you contact DHR and check your own records as you told me you would do, since an absence of notification of our union, UAPD, would undermine the validity and enforcement of the SIA.

I stand by the request in my letter (attached) that the ethics commission revise the SIA language for our department to language that is clearer and less subject to arbitrary interpretation and implementation. Our union representatives are looking forward to discussing with you alternate language.

*(See attached file: AWD denial appeal to EC with docs.pdf)*

**Judy Melinek, M.D.**

Assistant Medical Examiner  
Office of the Chief Medical Examiner  
850 Bryant Street  
San Francisco, CA 94103  
Work: 415-553-9007  
Cell: 415-760-1673  
Fax: 415-553-1650

Attachments: Save All to a Lotus Quickr Place...

AWD denial appeal to EC with docs.pdf | Save to a Lotus Quickr Place...

Medical Examiner's Office  
City and County of San Francisco  
Hall of Justice  
850 Bryant Street - North Terrace  
San Francisco, CA 94103  
Telephone: (415) 553-1694  
Fax: (415) 553-1650

FILED  
2011 FEB 28 PM 4:55  
SAN FRANCISCO  
ETHICS COMMISSION

Judy Melinek, M.D.  
Assistant Medical Examiner  
Phone: (415) 553-9007

February 24, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102  
Phone: (415) 252-3100/Fax: (415) 252-3112  
ethics.commission@sfgov.org

RE: Appeal of denial on Advance Written Determination (AWD)

To the Ethics Commission,

I would like to appeal a determination made by my supervisors, Chief Medical Examiner Dr. Amy Hart, and City Administrator Amy L. Brown, regarding the Statement for Incompatible Activities (SIA) for the Office of the Chief Medical Examiner. The SIA for our Department dictates that "No officer or employee of the Office of the Chief Medical Examiner Division may provide expert testimony in a civil or criminal judicial proceeding unrelated to job duties, except as authorized by an advance written determination pursuant to subsection C of this section by the Chief Medical Examiner or his or her designee." Recently, I submitted an Advance Written Determination (AWD) form requesting approval to testify as a legal consultant on a case that is outside the jurisdiction of the San Francisco Office of the Chief Medical Examiner (attached). The case, San Mateo Superior Case # CIV4811542, Wolkoff v. AMR/County of San Mateo, State of California Department of Forestry, Instrumentation Industries Inc, and State of California Department of Transportation, involves a wrongful death lawsuit for a passenger in a motor vehicle accident. The City and County of San Francisco is not a party in the lawsuit and my testimony would be restricted to my expertise as a forensic pathologist (e.g. cause, manner and mechanism of death or injury). When I testify in a consultative capacity it is always done on my own time, with approved leave from the Office of the Chief Medical Examiner, and I testify under oath that I am speaking as a retained expert witness, not as a representative of the City and County of San Francisco.

When I asked Dr. Hart why the AWD had been denied, given that for many years I have testified in similar cases with her knowledge and approval and without any adverse consequences, I was told "the real reason is that the whole totality of the case involves people who have cross relations with our county." She defined "relationship" as "enough of a relationship that it would cause an adverse impact on this department and the City." My supervisor wouldn't define "adverse impact."



I appealed her decision to Ed Lee, City Administrator, (currently Acting Mayor) on the following grounds:

1. Denial of outside consultative work is an infringement on my ability to support my family. The Assistant Medical Examiner position (#2598) is an hourly position; I am not a salaried employee. The past practice set by this office allowed Assistant Medical Examiners to perform outside consultative work in order to supplement their income. Chief Medical Examiner Dr. Boyd Stephens did outside consultation work for private gain as well. Invoking the SIA process in order to limit my ability to earn for my family is a violation of my rights as an employee, previously agreed upon Union MOU and contract.

2. Denial of expert testimony based on the details of the case is a violation of my First Amendment right to free speech. (See: *Hoover v. Morales* US Court of Appeals, Fifth Circuit, 164 F.3d 221).

3. The SIA language (C9.113.d) requires that a meet and confer occur with unions before its implementation. UAPD has informed me that a meet and confer never occurred and that they were not presented with the specific language pertaining to the SIA for our individual department.

4. Work on this particular case does not conflict with my official duties, require use of City resources, nor does it have excessive time demands.

5. This case does not present any conflict of interest to the City and County of San Francisco.

6. The number of Board Certified Forensic Pathologists available to give expert testimony is extremely limited, and hence to deprive litigants access to all publicly-employed physicians in any case involving another public agency (as would be the result of Dr. Hart's approach) would be deleterious to the administration of justice in our courts.

On February 1, 2011, I received a letter from Amy L. Brown, Acting City Administrator (attached) denying my appeal. The letter did not address the grounds for my appeal and instead indicated that the reason my testimony was denied was because my request to provide outside testimony in a case against AMR of San Mateo risks interfering with the close working relationship between the Office of the Chief Medical Examiner and AMR of San Mateo County. The letter asserts that "Expert witness testimony by an Assistant Medical Examiner risks disrupting office operations by interfering with those important working relationships."

I am therefore appealing this decision to the Ethics Commission. The letter from Ms. Brown indicates that the Statement of Incompatible Activities is being used by City officials to suppress testimony for political means. The SIA was initially created as the result of a voter-approved Proposition E in November 2003 (attached), with the intention of increasing transparency and ethical behavior in government. The stated intention on the ballot was to prevent government employees from having a financial interest that would affect their ability to



function ethically in their official role as government employees by disclosing "personal, professional and business relationships with people who are affected by the decisions they make." The portions pertaining to a Statement of Incompatible Activities (SIA) did not include the actual language of the SIA for each department; did not define "incompatible" or "conflict of interest" and required a meet and confer with the Unions prior to implementation.

In the denial of the AWD that I received, the reason given for my testimony being incompatible with my job for the City & County of San Francisco was not because of any ethical conflict of interest, but instead because of a perceived "risk" that such testimony would be a threat to the cooperative relationships between the City & County of San Francisco and AMR of San Mateo. No evidence was given that these relationships have ever been threatened in the past by previous testimony against vendors for the City. Furthermore, the contention that "Expert witness testimony by Assistant Medical Examiners in which the named party is a vendor of San Mateo County and/or a public agency of the County of San Mateo can and has interfered with the operations of the Medical Examiner's Office in the past" is false. The only information ever given to UAPD representatives regarding any "disruption" of operations was of a records request in late 2009 or early 2010, which is part of the legal mandate of our office to provide, and would have been easily integrated into the typical public records requests the Medical Examiner's office receives on a daily basis. No proof of this records request has ever been provided.

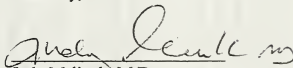
Furthermore, the denial of testimony against a government agency or vendor, while allowing testimony in defense of a government agency or vendor, indicates that the City & County of San Francisco is using the SIA as an instrument to suppress transparency in government and citizen's access to competent expert testimony in complaints against government entities. It also shows a complete lack of understanding of the role of an expert witness. Expert scientific opinions and testimony are not advocacy. I am a scientist; not a legal advocate. Were a person to die in San Francisco General Hospital due to negligence incurred in San Mateo County or by one of its vendors, it would be my duty to testify truthfully to my autopsy findings, as part of my job for San Francisco. I would be expected to testify truthfully regardless of whether the testimony affected the relationships with San Mateo County or its vendors. In fact, I have testified in cases where the City & County of San Francisco was a named party in the lawsuit and this was not a conflict of interest, even when my testimony did not help the City Attorney. The same ethical standards apply if I were to testify pro-bono or as a retained expert. To restrict my testimony as a volunteer or independent contractor, while expecting it as a San Francisco City & County employee, is unethical and unfair. That gives the appearance of ethical impropriety on the part of City Administrators, whose chief priority appears to be to suppress adverse testimony and conspire with adjacent Counties or their vendors to cover-up negligence.

I also want to add that my years of qualified testimony in multiple jurisdictions (including New York, Texas, California, Florida and Oregon) makes me a valuable employee and an asset to the City & County of San Francisco. I have shared my knowledge with my colleagues and have educated our investigators, rotating students and other City employees, including attorneys at the Public Defender's and City Attorney's offices, on the topics of expert witness testimony, cause of death determination and in-custody death. It is because of outside work and testimony that I am recognized as a national expert in forensic pathology, wound interpretation, in-custody

death investigation and medical malpractice/therapeutic complications. To continue to restrict my testimony limits my professional development and would hinder my ability to adequately serve the City & County of San Francisco. It would also encourage me to find employment elsewhere, as one other Assistant Medical Examiner has already done.

I respectfully request a hearing in front of the Ethics Commission regarding these issues with my Union representation present. I would like the Ethics Commission to also consider the supportive testimony of attorneys who know my work and ethical standards. Finally, I request that the Ethics Commission revise the SIA language for the Office of the Chief Medical Examiner so that it clearly defines the ethical requirements for our position via a meet and confer with our Unions, rather than leaving them to the interpretation of my supervisor via the AWD process. The AWD process as it is currently being implemented is arbitrary, burdensome and breaches attorney-client confidentiality, without actually increasing transparency or improving ethics. Recently, another Assistant Medical Examiner was told by Dr. Hart that in the future she would not be able to testify on cases for outside jurisdictions where she performed the autopsy, even if it meant she would have to violate a court order to testify. Clearly, this would cause her to choose between violating the SIA and violating a court order, either one of which would be grounds for termination. All the Assistant Medical Examiners, Medical Examiners Investigators, and Forensic Toxicologists who hold outside employment have been affected adversely by the wording of this SIA. I believe we would all be willing to come to the table and agree upon a clearer and more workable SIA, with the participation of our respective unions.

Sincerely,

  
Judy Melinek, M.D.

cc: Patricia Hernandez, UAPD  
Kim Carter, IFTPE Local 21  
Ricardo Lopez, SEIU Local 1021  
Linda Lim, Gwilliam, Ivary, Chiosso, Cavalli & Brewer

Attachments: AWD denial

Letter from Acting City Administrator Amy L. Brown dated February 1, 2011  
Text of voter-approved Proposition E  
*Hoover v. Morales* US Court of Appeals, Fifth Circuit, 164 F.3d 221  
Letters of support (14)

Under section 3.218 of the San Francisco Campaign and Governmental Conduct Code, each Department, Board, or Commission has adopted a Statement of Incompatible Activities ("SIA") that lists those outside activities that are inconsistent or incompatible with the duties of the officers and employees of the Department, Board, or Commission. Section III.C of the SIA permits an officer or employee to seek an Advance Written Determination whether a proposed outside activity is prohibited because it is inconsistent or incompatible with the duties of the officer or employee. A written Determination by the Decision-Maker that an activity is not incompatible with the SIA provides the Requestor with immunity from any subsequent enforcement action for a violation of the SIA, if the material facts are as presented in the Requestor's written submission. A written Determination does not provide immunity from any other laws that prohibit the proposed activity. An officer or employee may also seek a written opinion from the Ethics Commission to determine whether the person's proposed activities violate the SIA or any other local law relating to conflicts of interest and governmental ethics.

To obtain a written Determination, please fill out Sections A-E legibly and completely, and submit this form to the Decision-Maker identified in Section C. Please note that the Decision-Maker may require you to provide additional information in order to make a Determination. At any time, the Decision-Maker may revoke the Determination, by providing written notice to you specifying the changed facts, circumstances or other good cause that warrants the revocation.

I am a:

- ☒ City employee (Submit completed form to your Department head or his or her designee, or as directed in your SIA.)
- ☐ Department head (Submit completed form to your appointing officer.)
- ☐ Appointed member of a City board or commission (Submit completed form to your appointing officer, your Board or Commission, or the Ethics Commission, as directed in section III.C of the SIA. If the form is to be submitted to the Ethics Commission, please send the completed form to the Ethics Commission office at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102 or by faxing it to (415) 252-3112.)
- ☐ Elected official (Submit completed form to the Ethics Commission.)

A. Requestor Information (Please Print Clearly)

Name (Last, First) Meliner, Judy  
 Title Assistant Medical Examiner  
 Office Phone 415-553-9007  
 Email judy.meliner@sfgov.org  
 Office Address Office of Chief Medical Examiner  
850 Bryant Street  
 Zip Code 94103

C. Decision-Maker Information (Please Print Clearly)

Name (Last, First) Hart Amy P. M.D.  
 Title Chief Medical Examiner Office of the Chief Medical Examiner  
 Office Phone 415 553-1749 Name of Department, Board, or Commission  
 Email Amy.hart@sfgov.org  
 Office Address 850 Bryant St. Zip Code 94103  
 Office Address San Francisco, CA  
 Decision-Maker is (check applicable):  
☒ Department head  
☐ Department head's designee  
☐ Board or Commission  
☐ Appointing officer  
☐ Ethics Commission

Please turn page over.

S:\Conflicts of Interest\Incompatibility Statement\wise Advance Written Determination\Request for Advance Written Determination Form 08.14.08.doc

The Requester and Decision-Maker should retain a copy of this document for their records.

# Written Request

For Department Use Only—Date Written Request Received

Provide a description of the proposed activity and an explanation of why the activity is not incompatible under the SIA of your department, Board, or Commission SIA. Describe the proposed activity in sufficient detail for the Decision-Maker to make a fully informed determination. If necessary, the Decision-Maker may require additional information from you. Attach additional comments as appropriate.

12/3/10 *ad-*

**Description of Proposed Activity:** Expert opinion and possible testimony San Mateo Superior Court—Case # CIV811542 Gerald Wolkeff & Sandra R Wolkeff versus AMP/County of San Mateo, State of CA Dept of Forestry, Instrumentation Industries Inc., State of CA Dept of Transportation.

Autopsy in San Mateo County Coroner—review of material with expectation to investigate cause & manner of death in a passenger motor vehicle fatality with two occupants.

## Verification

☒ I certify under penalty of perjury that the information provided on this request for Advance Written Determination is true, complete, and correct. I understand that if the Decision-Maker determines that the proposed activity is incompatible, I will not be immune from prosecution from any subsequent enforcement action brought for a violation of the SIA. I further understand that if the Decision-Maker makes a determination that the proposed activity is not incompatible, the Decision-Maker may revoke that Determination at any time based on the changed facts, circumstances, or other good cause, by providing written notice to me.

*Melvin J. Jody*

Name of Requestor (Last, First)

*Anders Lenk*

Signature

12/3/10

Date Request Submitted

## Written Determination by the Decision-Maker

Based on the information submitted, I, the undersigned, find that the proposed activity:

- ☒ is incompatible with the SIA of the Department, Board, or Commission.
- ☐ is not incompatible with the SIA of the Department, Board, or Commission.

*Hart, Amy P. M.D.*

Full Name of the Decision-Maker (Last, First)

*Office of the Chief Medical Examiner*

Department, Board, or Commission

*Amy P. Hart M.D.*

Signature

12/2/10

Date

## Comments:

12/3/10

Wolkeff's are the family, this is a civil suit. AMP is a contractor with the County of San Mateo. State of CA Department of Forestry, Instrumentation Industries Inc is a manufacturer. 12/9/10 was or on responsible for the making of the instrument. 12/9/10 was

For Department Use Only—Date Notice provided to Requestor  
SAN FRANCISCO  
EXAMINER  
12/2/10

12/10 of Forestry is one of the State of CA Department of Forestry, Instrumentation Industries Inc is a manufacturer. 12/9/10 was



# OFFICE OF THE CITY ADMINISTRATOR



Edwin M. Lee, Mayor  
Amy L. Brown, Acting City Administrator

February 1, 2011

Judy Melinek, M.D.  
Assistant Medical Examiner  
Office of the Chief Medical Examiner  
850 Bryant Street  
San Francisco, CA 94103

Re: Appeal of Advance Written Determination, San Mateo Superior Case No. CIV 4811542  
Wolkoff v. AMR/County of San Mateo

Dear Dr. Melinek:

I am in receipt of your appeal to Ed Lee, dated December 30, 2010, regarding Dr. Amy Hart's denial of your request to work as a paid expert in San Mateo Superior Case No. CIV 4811542, Wolkoff v. AMR/County of San Mateo. You requested approval to provide voluntary, paid expert services to the plaintiff, Wolkoff. As I'm sure you know, since your appeal Ed Lee has been appointed to be Mayor. I am serving as Acting City Administrator in his absence. I have reviewed your appeal carefully and have decided to deny your appeal of the denial of request for Advance Written Determination. Based on the facts you presented in your request, your proposed outside activity is incompatible with your position and would violate the Statement of Incompatible Activities. My decision is based in part on the following factors:

The San Francisco Medical Examiner's Office by necessity has a close and open working relationship with San Mateo County, and I have significant concerns that your proposed expert services could jeopardize and disrupt that relationship. Due to the lack of a tertiary medical care facility in San Mateo County, there are frequently death investigation cases in which the incident occurs in San Mateo and the person eventually dies in San Francisco. These types of deaths, and the mutual aid agreement between San Mateo and San Francisco, require that the public agencies from these two counties have a close, cooperative relationship in order to conduct adequate death investigations. Your request to provide expert services interfering with that close working relationship. Expert witness testimony by Assistant Medical Examiners in which the named party is a vendor of San Mateo County and/or a public agency of the County of San Mateo can and has interfered with the operations of the Medical Examiner's Office in the past, and the practical effect of your proposed activity would disrupt the operations of the office.

Additionally, the vendor, AMR, whom you note is a party in this case, also provides contract services to the City and County of San Francisco. In San Francisco, AMR provides contract services as an ambulance provider. The Medical Examiner investigations require patient care reports (out of hospital medical records) and Assistant Medical Examiners as well as other staff may need to contact AMR staff to clarify or obtain additional investigative information. Expert witness testimony by an Assistant Medical Examiner risks disrupting office operations by interfering with those important working relationships.

Very truly yours,

Amy L. Brown  
Acting City Administrator



# Ethics Reform

# E

## PROPOSITION E

Shall the City consolidate its governmental ethics law in one code, amend some of those ethics laws, and create new ethics laws?

YES  
NO



## Digest

by the Ballot Simplification Committee

**THE WAY IT IS NOW:** The City Charter and City ordinances contain ethics rules for City officers and employees. For example, City law prohibits City officers and employees from:

- Making decisions in which they have a financial interest;
- Accepting gifts or campaign contributions from certain sources;
- Engaging in outside activities that are incompatible with their work for the City;
- Contracting with the City;
- Disclosing confidential City information; and
- Lobbying other City officers.

Ethics laws in the Charter or in ordinances passed by the voters may be changed only by the voters. The Board of Supervisors may change all other ethics laws.

Individuals who are guilty of official misconduct while in City office are permanently barred from City office or employment. In general, City officers who are convicted of crimes involving violence or fraud must be removed from office.

**THE PROPOSAL:** Proposition E is a Charter amendment that would modify and clarify the City's ethics laws as follows:

- Consolidate all of the City's ethics laws into its Campaign and Governmental Conduct Code;
- Amend some of these ethics laws; and
- Create new ethics laws.

The Board of Supervisors could amend these ethics laws by a two-thirds vote with the approval of four-fifths of the Ethics Commission. Voter approval no longer would be required.

In addition to the existing ethics laws, the new and amended laws would:

- Prohibit City officers and employees from making employment decisions regarding family members;
- Require City officers and employees to disclose their personal, professional and business relationships with people who are affected by the decisions they make;
- Restrict gifts from subordinates and from persons who contact City officers or employees;
- Change the restrictions on campaign contributions from City contractors;
- Regulate referrals made by City officers and employees;
- Require each City department to list outside activities that are incompatible with service or employment in that department; and
- Regulate the activities of City officers and employees after they leave City service or employment.

Any person removed from federal, state, county or city office because of official misconduct would be barred from City office or employment for five years.

Any City officer or employee would be removed if convicted of a felony crime involving violence or fraud, and if the Ethics Commission determined that the crime warrants removal. Any person removed from federal, state, county or city office because of such a crime would be barred from City office or employment for 10 years.

**A "YES" VOTE MEANS:** If you vote "Yes," you want to make these changes to the City's ethics laws.

**A "NO" VOTE MEANS:** If you vote "No," you do not want to make these changes.

## Controller's Statement on "E"

City Controller Edward Harrington has issued the following statement on the fiscal impact of Proposition E:

Should the proposed charter amendment be approved by the voters, in my opinion, there would be a minimal increase in the cost of government.

## How "E" Got on the Ballot

On July 22, 2003 the Board of Supervisors voted 10 to 0 to place Proposition E on the ballot.

The Supervisors voted as follows:

**Yes:** Supervisors Ammiano, Daly, Duffy, Gonzalez, Hall, Maxwell, McGoldrick, Newsom, Peskin, and Sandoval.

**Absent:** Supervisor Ma.

THIS MEASURE REQUIRES 50%+1 AFFIRMATIVE VOTES TO PASS.

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE. THE FULL TEXT BEGINS ON PAGE 88.

SOME OF THE WORDS USED IN THE BALLOT DIGEST ARE EXPLAINED ON PAGE 28.



## PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION E

*The Board of Supervisors authorized the submission of the following argument. As of the date of the publication of this Voter Information Pamphlet, the following Supervisors endorse the measure: Supervisors Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, and Sandoval.*

Faith in government is the cornerstone of democracy. To maintain the public's faith in local government, San Franciscans have enacted various conflict of interest laws. These laws seek to ensure that City officials make their decisions in a manner that is fair and evenhanded for all of our City's residents.

Many of these laws are outdated, confusing or don't adequately address the conduct they were intended to regulate. As a result, the San Francisco Ethics Commission spent the last 11 months analyzing and discussing these laws with members of the public, City officials and employees, and legal experts from across California. Proposition E is the result of that process.

**Proposition E updates, clarifies and strengthens the City's conflict of interest laws.** Some of Proposition E's major provisions:

- Restrict City officers and employees from making decisions that affect their financial interests and their own character or conduct;
- Restrict gifts to City officers and employees from individuals and entities that do business with the City;
- Prohibit City officers and employees from participating in out-

- side activities that are incompatible with their official duties;
- Mandate removal of City officers and employees who are convicted of felony crimes involving violence or fraud; and
- Restrict post-service activities of City officers and employees including additional restrictions for former Mayors and members of the Board of Supervisors.

**Proposition E is a vital step towards keeping democracy alive and well in San Francisco. Please vote YES on Proposition E.**

*Supervisor Tom Ammiano  
Supervisor Aaron Peskin  
Supervisor Tony Hall  
Supervisor Jake McGoldrick  
Supervisor Gerardo Sandoval  
Supervisor Fiona Ma  
Supervisor Matt Gonzalez*

## REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION E

## BOSS TWEED WOULD LIKE PROPOSITION E:

William Marcy Tweed, New York Democratic Alderman (1852-1853), U.S. Congressman (1853-1855), frequent State Senator, and Tammany Hall leader ran the most corrupt political machine in American history until his 1871 extortion conviction.

Richard Sullivan, bag man of the "Tweed Ring", entered the American language as the original "Tricky Dick". Sullivan jumped \$1,000,000 bail, fleeing to Egypt with his remaining \$6,000,000.

Proposition E is a piece of "reform legislation" worthy of Tweed and Sullivan.

Proposition E removes ethics laws from the City Charter, where there would be a public vote on any changes, to the Campaign and Governmental Code, which the Supervisors can amend.

Proposition E ends the two (2) year ban on former Supervisors lobbying City agencies, the new bar being only one (1) year.

If Sullivan were still alive, he would send an endorsement letter for Proposition E from Egypt.

Proposition E smells bad.

*Terence Faulkner, J.D.  
Past County Chairman  
San Francisco Republican Party*

*Thomas C. Agee*

*Max Woods  
County Central Committeeman*

*Gail E. Neira  
County Central Committeewoman*





## OPPONENT'S ARGUMENT AGAINST PROPOSITION E

**DON'T GIVE UP YOUR RIGHT TO VOTE ON SAN FRANCISCO'S VITAL CONFLICT OF INTEREST PROVISIONS:**

Proposition E will transfer our City's conflict of interest rules for public office holders from the City Charter (where the voters must approve any changes) to the local Campaign and Governmental Conduct Code (which can be modified by a two-thirds vote of the Board of Supervisors). Important questions involving the ethics of public officials should be voted upon by the people. Quick "fixes" are not in the City's best interest.

**BE MORE CAREFUL ABOUT HIRING PAST VIOLENT FELONS AND THOSE REMOVED FROM PUBLIC OFFICE FOR OFFICIAL MISCONDUCT:**

Lately, San Francisco has been hiring a number of people to deal with the public who are really little more than thugs. Banning those removed from official employment because of *"felony crime involving moral turpitude...for ten years and [those]... removed...[for] official misconduct...for five years"* is not enough. Such persons should only be hired after the necessary five or ten year ban and by at least a two-thirds vote of the Board of Supervisors after a full investigation of the individual proposed City employee. Dangerous criminals are not needed in San Francisco's public service.

**DON'T REDUCE THE TWO YEAR LOBBYING BAN ON FORMER SUPERVISORS TO ONE YEAR:**

The two (2) years ban on former Board of Supervisors members lobbying the City Government and its agencies should not be reduced to one (1) year.

**VOTE AGAINST PROPOSITION E:**

For all the above reasons, vote against this unwise Proposition E.

*Golden Gate Taxpayers Association*

*Dr. Terence Faulkner, J.D.*

*Chairman, Golden Gate Taxpayers Association*

## REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION E

*The Board of Supervisors authorized the submission of the following argument. As of the date of the publication of this Voter Information Pamphlet, the following Supervisors endorse the measure: Supervisors Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, and Sandoval.*

It has been nearly 30 years since the City conducted a complete review of local laws that govern the conduct of City officials and employees. Many of our existing ethics laws are outdated and fail to adequately address today's complex concerns. Accordingly, the Ethics Commission, with input from the public and ethics experts from across California, spent nearly one-year examining the City's existing laws and developing these amendments.

The opponents would like you to believe that Proposition E is an unwise measure. But contrary to what the opponents argue, Proposition E actually:

- Strengthens restrictions on the types of individuals who may serve the City by mandating the removal of a City officer or employee upon conviction of certain felony crimes

involving moral turpitude;

- Strengthens post-service laws by imposing on all City officers and employees, including members of the Board of Supervisors, a lifetime ban on lobbying about certain matters in which the officer or employee participated while serving the City;

Maintains your right to vote on ethics laws, but, like the City's campaign finance laws, permits a super-majority of the Board of Supervisors to amend the City's ethics laws only if the changes are approved by four-fifths of the Ethics Commission.

Listen to the Ethics Commission and the experts and approve this much-needed reform to our City's ethics laws. Please vote **Yes on Proposition E!**

*San Francisco Common Cause*





# Ethics Reform

## PAID ARGUMENTS IN FAVOR OF PROPOSITION E

**SAN FRANCISCO DEMOCRATIC PARTY** urges **YES** on E -- Strengthens rules against political conflicts of interest.

*Jane Morrison*, Chair, San Francisco Democratic Party

The true source of funds used for the printing fee of this argument is the San Francisco Democratic Party.

The three largest contributors to the true source recipient committee are: 1. Tom Lantos 2. John Burton 3. Carole Migden.

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In 1995, I crafted Prop N, San Francisco's first major Ethics reform. Let's continue to fight for clean government. Please vote Yes.

*Terence Hallinan*

The true source of funds used for the printing fee of this argument is the Committee to Re-Elect Terence Hallinan DA 2003.

The three largest contributors to the true source recipient committee are: 1. Grace Ko 2. Michael Levy 3. James O'Connor.

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The San Francisco Labor Council supports Proposition E. Consolidation of all of the City's ethics laws in one code makes sense.

The San Francisco Labor Council recommends a **YES** vote on Proposition E.

*San Francisco Labor Council AFL-CIO*

The true source of funds used for the printing fee of this argument is the San Francisco Labor Council.



## PAID ARGUMENTS AGAINST PROPOSITION E

### This Measure is Extremely Misleading.

Who could be against "ethics" in government? No one. But Proposition E is an extremely misleading measure. It includes many ideas that make sense, but these are bundled in with some terrible ideas that will make City government work even worse than it already does. It tries to write a law against every ethical lapse of the last eight years, but is so overly-broad and so over-reaching that it will literally tie the City into knots. And if it passes, there will be no way to change the provisions without going back to the ballot. Among its major problems:

- Prop. E will make it extremely difficult to recruit citizen volunteers to serve on commission and advisory boards.
- Prop. E will make it harder to hire knowledgeable people to work for the City.
- Prop. E is a veiled power grab by the Board of Supervisors.

### Vote No on Prop. E.

For more information, see [www.spur.org](http://www.spur.org)

*San Francisco Planning and Urban Research Association (SPUR)*

The true source of funds used for the printing fee of this argument is the SPUR Urban Issues Committee.

The three largest contributors to the true source recipient committee are 1. Oz Erickson 2. James Chappell 3. Peter Mezey.

### Case of the Fox Guarding the Henhouse?

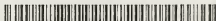
Proposition E proclaims that it's an ethics reform measure, but, in fact, it would move various ethics and conflict of interest provisions for city officers and employees from the Charter into the Campaign and Government Conduct Code—where voter approval would no longer be required for changes in the law.

The San Francisco Association of REALTORS® was one of the few organizations in San Francisco that supported the creation of an ethics commission during the last decade. And, we would be the first to admit that Proposition E contains many worthwhile new provisions governing ethics and conflicts of interest among city officers and employees. But moving the ethics and conflict of interest provisions from the Charter into ordinance form—eliminating voter approval of any changes—strikes us as not being in the public's interest. For that reason, we must respectfully urge a "NO" vote on Proposition E.

### VOTE NO ON E

*San Francisco Association of REALTORS®*

The true source of funds used for the printing fee of this argument is the San Francisco Association of REALTORS®.



# LEGAL TEXT OF PROPOSITION E

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by amending Sections 4.108, 4.109, 15.100, 15.103, 15.105, 16.111 and Article XVII, deleting Sections 15.104, 15.106, 15.108, C8.105 and adding Section 18.115 and Appendix Sections C9.101, C9.102, C9.103, C9.104, C9.105, C9.106, C9.107, C9.108, C9.109, C9.110, C9.111, C9.112, C9.113, C9.114, C9.115, C9.116, C9.117, C9.118, C9.119, C9.120, C9.121, C9.122, C9.123, C9.124, C9.125, C9.126 and C9.127 to enact new conflict of interest provisions, to make technical changes, to move various provisions into ordinances, and to clarify existing provisions.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 4, 2003, a proposal to amend the Charter of the City and County by amending Sections 4.108, 4.109, 15.100, 15.103, 15.105, 16.111 and Article XVII, deleting Sections 15.104, 15.106, 15.108 and C8.105 and adding Section 18.115 and Appendix Sections C9.101, C9.102, C9.103, C9.104, C9.105, C9.106, C9.107, C9.108, C9.109, C9.110, C9.111, C9.112, C9.113, C9.114, C9.115, C9.116, C9.117, C9.118, C9.119, C9.120, C9.121, C9.122, C9.123, C9.124, C9.125, C9.126 and C9.127 to read as follows:

Note: Additions are single-underline italics  
Times New Roman.  
Deletions are ~~strikethrough italics~~  
~~Times New Roman~~.

## SEC. 4.108. FIRE COMMISSION.

The Fire Commission shall consist of five members appointed by the Mayor, pursuant to Section 3.100, for four-year terms. Members may be removed by the Mayor. In addition to any other powers set forth in this Charter, the Fire Commission is empowered to prescribe and enforce any reasonable rules and regulations that it deems necessary to provide for the efficiency of the Department, provided that the civil service and ethics provisions of this Charter shall control in the event of any conflict with rules adopted under this section.

## SEC. 4.109. POLICE COMMISSION.

The Police Commission shall consist of five members appointed by the Mayor, pursuant to Section 3.100, for four-year terms. Members may be removed by the Mayor.

Notwithstanding any other provision of the Charter, the Chief of Police may be removed by the Commission or the Mayor, acting jointly or separately of each other. In addition to any other powers set forth in this Charter, the Police Commission is empowered to prescribe and enforce any reasonable rules and regulations that it deems necessary to provide for the efficiency of the Department, provided that the civil service and ethics provisions of this

Charter shall control in the event of any conflict with rules adopted under this section.

## SEC. 15.100. ETHICS COMMISSION.

The Ethics Commission shall consist of five members who shall serve six-year terms; provided that the first five commissioners to be appointed to take office on the first day of February, 2002 shall by lot classify their terms so that the term of one commissioner shall expire at 12:00 o'clock noon on each of the second, third, fourth, fifth and sixth anniversaries of such date, respectively; and, on the expiration of these and successive terms of office, the appointments shall be made for six-year terms.

The Mayor, the Board of Supervisors, the City Attorney, the District Attorney and the Assessor each shall appoint one member of the Commission. The member appointed by the Mayor shall have a background in public information and public meetings. The member appointed by the City Attorney shall have a background in law as it relates to government ethics. The member appointed by the Assessor shall have a background in campaign finance. The members appointed by the District Attorney and Board of Supervisors shall be broadly representative of the general public.

In the event a vacancy occurs, the officer who appointed the member vacating the office shall appoint a qualified person to complete the remainder of the term. Members of the Commission shall serve without compensation. Members of the Commission shall be officers of the City and County, and may be removed by the appointing authority only pursuant to Section 15.105.

No person may serve more than one six-year term as a member of the Commission, provided that persons appointed to fill a vacancy for an unexpired term with less than three years remaining or appointed to an initial term of three or fewer years shall be eligible to be appointed to one additional six-year term. Any term served before the effective date of this Section shall not count toward a member's term limit. Any person who completes a term as a Commissioner shall be eligible for reappointment six years after the expiration of his or her term. Notwithstanding any provisions of this Section or any other section of the Charter to the contrary, the respective terms of office of the members of the Commission who shall hold office on the first day of February, 2002, shall expire at 12 o'clock noon on said date, and the five persons appointed as members of the Commission as provided in this Section shall succeed to said offices on said first day of February, 2002, at 12 o'clock noon; provided that if any appointing authority has not made a new appointment by such date, the sitting member shall continue to serve until replaced by the new appointee.

During his or her tenure, members and employees of the Ethics Commission are subject to the following restrictions:

(a) Restrictions on Holding Office. No

member or employee of the Ethics Commission may hold any other City or County office or be an officer of a political party.

(b) Restrictions on Employment. No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold employment with the City and County and no employee of the Commission may hold any other employment with the City and County.

(c) Restrictions on Political Activities. No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure, or a City officer running for any elective office. For the purposes of this section, participation in a campaign includes but is not limited to making contributions or soliciting contributions to any committee within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure, or participating in decisions by organizations to participate in a campaign.

~~For a period of one year upon completing his or her service with the Commission, no member of the Commission may be a lobbyist or campaign consultant, be employed by or receive any gifts or other compensation from a lobbyist or campaign consultant, or a person who employs someone required to register as a lobbyist or campaign consultant. For purposes of this section, the terms lobbyist and campaign consultant mean persons required to register under the City's lobbyist or campaign consultant ordinances.~~

The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

## SEC. 15.103. CONFLICT OF INTEREST.

~~All officers and employees of the City and County shall be subject to all state laws and City ordinances prescribing conflicts of interest and incompatible activities, as well as the provisions of Section C8.105. Any violation of such laws shall be official misconduct and shall be a basis for discipline and/or removal, in addition to any other penalties prescribed by law.~~

Public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust. The City may adopt conflict of interest and governmental ethics laws to implement this provision and to prescribe penalties in addition to discipline and removal authorized in this Charter. All officers and employees of the City and County shall be sub-

(Continued on next page)





ject to such conflict of interest and governmental ethics laws and the penalties prescribed by such laws.

**SEC. 15.104. PENALTY FOR OFFICIAL MISCONDUCT.**

Any person found guilty of official misconduct shall forfeit his or her office, and shall be forever after ~~disbarred and disqualified from being elected, appointed or employed in the service of the City and County.~~

**SEC. 15.105. SUSPENSION AND REMOVAL.**

**(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS.** Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, *Golden Gate Concourse Authority Board of Directors*, Health Commission, Human Services Commission, Juvenile Probation Commission, *Municipal Transportation Agency Board of Directors*, *Port Commission*, Public Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees, *Taxi Commission*, War Memorial and Performing Art Center Board of Trustees, Board of Education or Community College Board is *subject to suspension and removal for official misconduct as provided in this section.* Such officer may be suspended by the Mayor and removed by the Board of Supervisors for official misconduct, and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension.

Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. ~~Hearing by the Ethics Commission shall hold a hearing be held not less than five days after the filing of written charges.~~ After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

**(b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, AND ENTERTAINMENT COMMISSION.** Members of the Building Inspection Commission, the Planning Commission, and the Board of Appeals, the Elections Commission, the Ethics Commission,

and the Entertainment Commission who were appointed by the Mayor may be suspended and removed pursuant to the provisions of subsection (a) of this section ~~set forth above except that the Mayor may initiate removal only of the Mayor's appointees and the appointing authority shall act in place of the Mayor for all other appointees.~~ Members of the Commission appointed by the President of the Board of Supervisors may be suspended and removed pursuant to the same procedures, except that the President of the Board shall act in place of the Mayor. Members of the Elections Commission and Ethics Commission may be ~~suspended and removed pursuant to the provisions set forth above, except that the appointing authority shall act in place of the Mayor.~~

**(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.**

**(1) OFFICERS Enumerated in Subsections (a) and (b).**

~~(A) The Mayor.~~ An appointing authority must immediately remove from office any ~~elective official enumerated in subsections (a) or (b) upon:~~

~~(i) a court's final conviction of that official convicted of a felony crime involving moral turpitude; and~~

~~(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.~~

~~(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official, and failure of the Mayor so to act shall constitute official misconduct on his or her part. Any appointee of the Mayor or the Board of Supervisors guilty of official misconduct or convicted of a crime involving moral turpitude must be removed by the Mayor or the Board of Supervisors, as the case may be, and failure of the Mayor or any Supervisor to take such action shall constitute official misconduct on their part. Any member of the Elections Commission or Ethics Commission guilty of official misconduct or convicted of a crime involving moral turpitude must be removed by the appointing authority, and failure of the appointing authority to act shall constitute official misconduct on his or her part.~~

~~(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.~~

~~(2) Other Officers and Employees.~~

~~(A) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority must be removed upon:~~

~~(i) a final conviction of a felony crime involving moral turpitude; and~~

~~(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.~~

~~(B) For cause appointees. Officers and employees who by law may be removed only for~~

cause must be removed upon:

~~(i) a final conviction of a felony crime involving moral turpitude; and~~

~~(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.~~

~~(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.~~

**(d) DISQUALIFICATION.**

~~(1)(A) Any person who has been removed from any federal, state, county or city office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.~~

~~(B) Any person removed from any federal, state, county or city office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.~~

~~(2)(A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.~~

~~(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.~~

**(e) OFFICIAL MISCONDUCT.** Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.



## LEGAL TEXT OF PROPOSITION E (CONTINUED)

### ~~SEC. 15.106. — DUAL OFFICE HOLDING.~~

~~Any person holding an office under the City and County with an annual salary in excess of \$2,500 who is elected or by appointment, who shall, during his or her term of office, hold or retain any other office with such a salary under the government of the United States, the State of California, or the City and County shall be deemed to have thereby vacated the office held by him or her under the City and County.~~

### ~~SEC. 15.108. — EMPLOYMENT OF FORMER MAYOR OR SUPERVISOR.~~

~~No person shall be eligible for a period of one year after the last day of service as Mayor or member of the Board of Supervisors for appointment to any full-time, compensated employment with the City and County. This restriction shall not apply to a former Mayor or Supervisor elected to an office of the City and County, appointed to fill a vacancy in an elective office of the City and County, or appointed to a board or commission in the executive branch.~~

### SEC. 16.118. APPENDIX C — ETHICS PROVISIONS.

The following sections of the Charter of 1932, as amended, shall be included in Appendix C with full force and effect, and each shall be designated with a prefix "C":

#### 3.699-10—3.699-16 Ethics Commission Procedures

#### ~~8.195 Conflict of Interest and Other Prohibited Practices~~

The provisions of Appendix C may be amended only pursuant to the provisions of state law governing charter amendments.

### ARTICLE XVII: DEFINITIONS

For all purposes of this Charter, the following terms shall have the meanings specified below:

"Business day" shall mean any day other than a Saturday, Sunday or holiday on which governmental agencies are authorized by law to close.

"Confirm" or "confirmation" shall mean the approval by a majority of the members of the Board of Supervisors.

"Discrimination" shall mean violations of civil rights on account of race, color, religion, creed, sex, national origin, ethnicity, age, disability or medical condition, political affiliation, sexual orientation, ancestry, marital or domestic partners status, gender identity, parental status, other non-merit factors, or any category provided for by ordinance.

"Domestic partners" shall mean persons who register their partnerships pursuant to the voter-approved Domestic Partnership Ordinance.

"Elector" shall mean a person registered to vote in the City and County.

"For cause" shall mean the issuance of a written public statement by the Mayor describing those actions taken by an individual as a

member of a board or commission which are the reasons for removal, provided such reasons constitute official misconduct in office.

"General municipal election" shall mean the election to be held in the City and County on the Tuesday immediately following the first Monday in November in odd-numbered years.

"Initiative" shall mean (1) a proposal by the voters with respect to any ordinance, act or other measure which is within the powers conferred upon the Board of Supervisors to enact, any legislative act which is within the power conferred upon any other official, board, commission or other unit of government to adopt, or any declaration of policy; or (2) any measure submitted to the voters by the Mayor or by the Board of Supervisors, or four or more members of the Board.

"Notice" shall mean publication in an official newspaper (as defined by ordinance), and a contemporaneous filing with the Clerk of the Board of Supervisors or other appropriate office.

~~"Official misconduct" shall mean any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any willful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action implicitly required of all public officers.~~

"One-third," "a majority" or "two-thirds" of the Board of Supervisors or any other board or commission of the City and County shall mean one-third, a majority or two-thirds of all members of such board or commission.

"Published" shall mean published in an official newspaper of the City and County.

"Referendum" shall mean the power of the voters to nullify ordinances involving legislative matters except that the referendum power shall not extend to any portion of the annual budget or appropriations, annual salary ordinances, ordinances authorizing the City Attorney to compromise litigation, ordinances levying taxes, ordinances relative to purely administrative matters, ordinances necessary to enable the Mayor to carry out the Mayor's emergency powers, or ordinances adopted pursuant to Section 9.106 of this Charter.

"Special municipal election" shall mean, in addition to special elections otherwise required by law, the election called by (1) the Director of Elections with respect to an initiative, referendum or recall, and (2) the Board of Supervisors with respect to bond issues, election of an official not required to be elected at the general municipal election, or an initiative or referendum.

"Statewide election" shall mean an election held throughout the state.

"Voter" shall mean an elector who is registered in accordance with the provisions of state law.

### SEC. 18.115. DELETION OF ORDINANCES REGULATING CONFLICTS OF INTEREST AND TRANSFER OF CHAR-

### TER SECTIONS REGULATING CONFLICTS OF INTEREST INTO THE CAMPAIGN AND GOVERNMENTAL CONDUCT CODE.

(a) On the effective date of this Charter Amendment, Section 1.50 of the Administrative Code and Section 1.200: Article III, Chapter 2 and Section 3.200: Article III, Chapter 3 and Section 3.300: Article III, Chapter 4 and Sections 3.400 and 3.405: Article III, Chapter 5 and Sections 3.500, 3.505, 3.510, 3.515, 3.520, 3.525, 3.530, 3.535, 3.540, 3.545: Article III, Chapter 6 and Section 3.600: and Article III, Chapter 7 and Sections 3.700, 3.705, 3.710, 3.715, 3.720, 3.725, 3.730, 3.735, and 3.740 of the Campaign and Governmental Conduct Code shall be deemed repealed, and the City Attorney is authorized and directed to take appropriate steps to remove them from future editions of published codes.

(b) On the effective date of this Charter Amendment, Charter Sections C9.101—C9.127 shall be deemed enacted into ordinance, and the City Attorney is directed and authorized to codify Section C9.101 as Administrative Code Section 1.50; Section C9.102 as Campaign and Governmental Conduct Code Section 1.200; Section C9.103 as Campaign and Governmental Conduct Code Section 3.1-102.5; Section C9.127 in a new Chapter 3 of the Campaign and Governmental Conduct Code titled "Ethics Commission" as Section 3.300; and the remaining sections in a new Chapter 2 of the Campaign and Governmental Conduct Code titled "Conflict of Interest and Other Prohibited Activities" as follows: Section C9.104 as Section 3.200; Section C9.105 as Section 3.202; Section C9.106 as Section 3.204; Section C9.107 as Section 3.206; Section C9.108 as Section 3.208; Section C9.109 as Section 3.210; Section C9.110 as Section 3.212; Section C9.111 as Section 3.214; Section C9.112 as Section 3.216; Section C9.113 as Section 3.218; Section C9.114 as Section 3.220; Section C9.115 as Section 3.222; Section C9.116 as Section 3.224; Section C9.117 as Section 3.226; Section C9.118 as Section 3.228; Section C9.119 as Section 3.230; Section C9.120 as Section 3.232; Section C9.121 as Section 3.234; Section C9.122 as Section 3.236; Section C9.123 as Section 3.238; Section C9.124 as Section 3.240; Section C9.125 as Section 3.242; and Section C9.126 as Section 3.244.

These sections may be amended by the Board of Supervisors if (a) the amendment serves the purposes of the Ordinance; (b) the Ethics Commission approves the proposed amendment by at least a four-fifths vote of all its members; (c) the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors; and (d) the Board of Supervisors

(Continued on next page)



## LEGAL TEXT OF PROPOSITION E (CONTINUED)

approves the proposed amendment by at least a two-thirds vote of all its members.

### **CE-105 CONFLICT OF INTEREST AND OTHER PROHIBITED PRACTICES**

(a) No officer or employee of the city and county shall become directly or indirectly interested in any contract, franchise, right privilege or sale or lease of property awarded, entered into or authorized by him or her in his or her capacity as an officer or employee, or by an officer or employee under his or her supervision and control, or by a board or commission of which he or she is a member, unless same is devoted upon him or her by law. An officer or employee with such an interest, however acquired, shall become divested of said interest within 60 days or shall resign said office or employment.

(b) No officer or employee shall give or promise any money or other valuable thing in consideration of his or her nomination, appointment, or election to any city and county office or employment or accept, other than lawful political campaign contributions, any gratuity in money or other valuable thing, either directly or indirectly, from any subordinate or employee or from any candidate or applicant for a position as employee or subordinate under him or her.

(c) No officer or employee shall make, participate in making or in any way attempt to use his or her office or employment to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest, as defined by California Government Code Section 87102.

(d) No officer or employee of the city and county shall willfully or knowingly disclose any privileged information concerning property, government, or affairs of the city and county, unless a duty to do so is imposed upon said person by law, nor shall that person use any privileged information obtained by him or her by virtue of his or her office or employment to advance the financial or other private interest of himself or herself or others.

(e) No person who has served as an officer or employee of the city and county shall within a period of two years after termination of such service or employment appear before the board or agency of the city and county of which he or she was a member in order to represent any private interest, provided, however, that said officer or employee may appear before said board for the purpose of representing himself or herself.

(f) No officer or employee of the city and county shall receive, directly or indirectly, any compensation, reward or gift from any source except compensation from the City and County of San Francisco, or any other governmental agency to which he or she has been duly appointed for any service, advice, assistance or other matter related to the governmental processes of the city and county, except for fees for speeches or published writing.

(g) The ethics commission with respect to

officers and employees whose positions are subject to the civil service provisions of the charter other than officers and members of the fire and police departments, the fire commission with respect to officers and members of the fire department and the police commission with respect to officers and members of the police department, are each empowered to prescribe and enforce such reasonable rules and regulations as each commission deems necessary to effectuate the purposes and intent of this section. Such rules and regulations may provide for restrictions against activities, employments and enterprises other than those described or mentioned herein when such restrictions are found necessary for the preservation of the honor or integrity of the city and county. Rules and regulations previously adopted or approved by the civil service pursuant to this section shall remain in effect until amended by the ethics commission.

The civil service commission with respect to officers and employees whose positions are subject to the civil service provisions of the charter other than officers and members of the fire and police departments, the fire commission with respect to officers and members of the fire department and the police commission with respect to officers and members of the police department, are each empowered to prescribe and enforce such reasonable rules and regulations as each commission deems necessary to provide for the efficiency of the city and county civil service.

(i) An officer or employee shall not be deemed to be interested in any transaction described in Subsections (a) or (c) above if he or she has only a remote interest in the transaction and if the fact of such interest is disclosed and noted in the official records of the board, commission or department and there after the board, commission or department authorities, approves, or ratifies the transaction in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest or by his or her immediate superior unless the transaction must be awarded to the highest or lowest responsible bidder as the case may be on a particular day and the vote of such officer or member is necessary to a quorum on that day.

(j) As used in this article "remote interest" means:

(1) That of a non-salaried officer of a non-profit corporation;

(2) That of an employee or agent of the party involved in the transaction, if such party has 10 or more other employees and if the officer or employee was an employee or agent of said party for at least three years prior to his or her initially accepting his or her office or employment.

For the purposes of this subsection, time of employment with the party by the officer or employee shall be counted in computing the three-year period specified in this subsection

even though such party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by such officer. Time of employment in such case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the party is the same or substantially similar to that which existed before such transfer or change in organization. For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of such party.

(C) That of a parent in the earnings of his or her minor child for personal services;

(D) That of a landlord or tenant of the transacting party;

(E) That of an attorney of the transacting party;

(F) That of a supplier of goods or services when such goods or services had been supplied to the transacting party by the officer or employee for at least five years prior to his or her election or appointment to office or employment;

(G) That of an officer, director or employee of a bank, bank holding company, or savings and loan association with which a party to the transaction has the relationship of borrower or depositor, debtor or creditor.

(2) The provisions of this subsection shall not be applicable to any officer or employee interested in a transaction who influences or attempts to influence another officer or employee to enter into the transaction.

(i) An officer or employee shall not be deemed to be interested in a transaction pursuant to Subsections (a) and (c) above if his or her interest is:

(1) The ownership of less than three percent of the shares of a corporation for profit, provided the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed five percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed five percent of his or her total annual income;

(2) That of an officer or employee in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty;

(3) That of a recipient of public services generally provided by the board, commission or department of which he or she is a member or employee, on the same terms and conditions as if he or she were not a member or employee of the board, commission or department.

(f) That of a landlord or tenant of the transacting party if such party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining

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## LEGAL TEXT OF PROPOSITION E (CONTINUED)

ing state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of such transaction is the property in which such officer or employee has such interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning and subject to the provisions of Subsection 1(c).

(5) That of a tenant in a public housing authority created pursuant to Part 2 commencing with Section 24200 of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 2.7 commencing with Section 24400 of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a non-salaried member of a nonprofit corporation, provided that such interest is disclosed at the time of the first consideration of the transaction and provided further that such interest is noted in its official records.

(8) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of a borrower or depositor, debtor or creditor.

(9) No member of any board or commission of the city and county shall knowingly vote on or in any way attempt to influence the outcome of governmental action on any measure or question involving his or her own character or conduct, his or her right as a member, or his or her appointment to any office, position, or employment, wherein the said member's financial interest is immediate, particular, and distinct from the public interest. The word "knowingly" as used in this paragraph shall mean actual or constructive knowledge of the existence of the interest which would disqualify the vote under the provisions of this section.

If under any provision of this charter or of any ordinance, resolution, rule or regulation, action on any measure or question must be taken on a particular day and such action cannot be taken by a qualified voting quorum of the board or commission on that day by reason for the disqualification from voting under the provisions of this section, said action may be postponed until, but not later than, there are sufficient qualified members present to vote and take action on said measure or question. The term "a qualified voting quorum" as used in this paragraph shall mean the presence of a sufficient number of qualified voting members

of the board or commission to take either affirmative or negative action on the measure or question before the board or commission.

(10) The city attorney, the district attorney of the City and County of San Francisco or any resident or group of residents of the City and County of San Francisco may bring a suit in the superior court to compel compliance with the provisions of this section.

(11) The provisions of Section 3.105 shall not apply to any member serving as a representative of any profession, trade, business, union or association on any board, commission or other body heretofore or hereafter created by an ordinance of the City and County of San Francisco which requires that the membership consists in whole or in part of representatives of specific professions, trades, businesses, unions or associations. Conflicts of interest and prohibited practices of such members and the penalties therefor shall be as prescribed by the ordinance creating such board, commission or other body or by an amendment thereto.

(12) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon a final judgment of conviction of same, shall be removed from office or in the alternative shall be subject to a penalty of not more than one year in jail and/or fine of not more than \$10,000, as well as removal.

(13) Every contract made in violation of any of the provisions of Section 3.105 may be avoided at the instance of any party except the officer or employee interested therein. No such contract may be avoided because of the interest of an officer or employee therein unless such contract is made in the official capacity of such officer or employee, or by a board or body of which he or she is a member.

### **C9.101. OFFICERS OF THE CITY AND COUNTY.**

The officers of the City and County shall be the officers elected by vote of the people, members of the Board of Education, members of boards and commissions appointed by the Mayor and the Board of Supervisors, members of the Building Inspection Commission, members of the Ethics Commission, members of the Elections Commission, members of the Retirement Board, members of the Health Service Board, members of the Sunshine Ordinance Task Force, members of the Youth Commission, members of the Small Business Commission, members of the Board of Law Library Trustees, the Superintendent of Schools, the executive appointed as the chief executive officer under each board or commission, the Controller, the City Administrator, the head of each department under the Mayor, and such other officers as may hereafter be provided by law or so designated by ordinance.

### **C9.102. PROHIBITION ON MULTIPLE CAMPAIGN ACCOUNTS.**

An officer of the City and County of San Francisco, or any person or committee on

behalf of an officer of the City and County of San Francisco, is hereby prohibited from establishing any account, other than a campaign fund for the solicitation and expenditure of funds. Nothing in this section shall prohibit an officer from spending personal funds on official or related business activities.

(a) An account established by an officer or on behalf of an officer of the City and County of San Francisco is defined as any account used to pay expenses incurred directly in connection with carrying out the usual and necessary duties of holding office, including but not limited to, travel between an officer's residence and public office, meetings with constituents which are not campaign related meetings, salary payments to staff for other than campaign activities, office promotional materials, advertising mailings, postage, and paid radio or television airtime.

(b) Any and all monies or services accepted or received by an officer or on behalf of an officer, except monies or services accepted or received from or as a result of the officer's personal or business activities, unrelated to his or her office, shall be deposited, credited or otherwise reported to a campaign fund established by the officer and shall be subject to the provisions contained in Section 1.114 of the Campaign and Governmental Conduct Code.

(c) This Section shall not be applied retroactively. Funds held in officeholder accounts, or accounts on behalf of any officer, existing on November 2, 1993, may be expended on official or business related activities notwithstanding this Section. No further deposits, transfers, credits or other additions to the balance of the account shall be made. Upon depletion of all available funds in the officer's account, the account shall be closed.

### **C9.103. FAILURE TO FILE**

(a) Subject to the removal and Civil Service provisions of the Charter as well as any applicable Civil Service Rules, any officer or employee of the City and County of San Francisco who fails to file any statement required by sections 3.1-101 and 3.1-102 of the Campaign and Governmental Conduct Code within 30 days after receiving notice from the Ethics Commission of a failure to file may be subject to disciplinary action by his or her appointing authority, including removal from office or termination of employment.

(b) The Ethics Commission may issue a letter to an appointing authority recommending removal of any City officer or termination of any City employee who has failed to file a statement required by sections 3.1-101 and 3.1-102 of the Campaign and Governmental Conduct Code if the City officer or employee has not filed the required statement within 30 days of receiving notice from the Ethics Commission of

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## LEGAL TEXT OF PROPOSITION E (CONTINUED)

his or her failure to file.

(c) Every appointing authority whose appointees file statements required by sections 3.1-101 and 3.1-102 of the Campaign and Governmental Conduct Code with the Ethics Commission shall provide written notice to the Ethics Commission of the name of any appointee who has assumed or left office or employment. Such notice shall be provided within 15 days of the City officer or employee assuming or leaving office or employment. Failure to provide such notice may constitute official misconduct.

### **CY.104. FINDINGS AND PURPOSE**

(a) The people of the City and County of San Francisco declare that public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust. To assure that the governmental processes of the City and County promote fairness and equity for all residents and to maintain public trust in governmental institutions, the people of the City and County declare that they have a compelling interest in creating laws regulating conflicts of interest and outside activities of City officers and employees.

(b) The proper operation of the government of the City and County of San Francisco requires that public officers and employees be independent, impartial, and responsible to the people and that public office and employment not be used for personal gain. The public interest, therefore, requires that officers and employees of the City and County be prohibited from making, participating in making or otherwise seeking to influence governmental decisions in which they have a financial interest or accepting gifts and other things of value from regulated sources.

(c) In order to maintain the public's confidence in the integrity of governmental decisions related to the appointment and discipline of public officers and employees, public officers and employees must not give or receive anything of value in consideration of their appointment or accept anything of value from their subordinates, and must not participate in decisions related to their own character or conduct or that of their family members.

(d) The City and County contracts should be, and should appear to be, awarded on a fair and impartial basis. The practice of members of Boards and Commissions of the City and County contracting with the City and County creates the potential for, and the appearance of, favoritism or preferential treatment by the City and County. Prohibiting members of Boards and Commissions of the City and County from contracting with the City and County will eliminate both actual and perceived favoritism or preferential treatment without creating unnecessary barriers to public service.

(e) Government decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis. The practice of former officers

and employees communicating with their former colleagues on behalf of private interests and the practice of current officers of the City and County communicating with other officers and employees on behalf of any other person for compensation creates the potential for, and the appearance of, undue influence, favoritism or preferential treatment. Prohibiting former officers and employees from communicating orally, in writing, or in any other manner with their former colleagues for specified periods of time and prohibiting current officers from communicating orally, in writing, or in any other manner with other officers and employees of the City and County on behalf of any other person for compensation will eliminate both actual and perceived undue influence, favoritism or preferential treatment without creating unnecessary barriers to public service.

### **CY.105. CONSTRUCTION**

This Chapter shall be liberally construed in order to effectuate its purposes, provided that nothing in this Chapter shall be interpreted or applied to prohibit officers, members and representatives of employee organizations from engaging in organizational activities that are protected by the California Meyers-Milias-Brown Act, the First Amendment to the United States Constitution or any other federal, state or local law. No error, irregularity, informality, neglect or omission of any officer in any procedure taken under this Chapter which does not directly affect the jurisdiction of the Board of Supervisors or the City and County to control the ethical conduct of its officers and employees shall avoid the effect of this Chapter.

### **CY.106. AMENDMENT OR REPEAL OF THIS CHAPTER**

The voters may amend or repeal this Chapter. The Board of Supervisors may amend this Chapter if all of the following conditions are met:

(a) The amendment furthers the purposes of this Chapter;

(b) The Ethics Commission approves the proposed amendment by at least a four-fifths vote of all its members;

(c) The proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors; and

(d) The Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

### **CY.107. FINANCIAL CONFLICTS OF INTEREST**

(a) Incorporation of the California Political Reform Act. No officer or employee of the City and County shall make, participate in making, or seek to influence a decision of the City and County in which the officer or employee has a financial interest within the meaning of California Government Code section 87100

et seq. and any subsequent amendments to these sections.

(b) Incorporation of California Government Code 1090, et seq. No officer or employee of the City and County shall make a contract in which he or she has a financial interest within the meaning of California Government Code section 1090 et seq. and any subsequent amendments to these sections.

(c) Future Employment. No officer or employee of the City shall make, participate in making, or otherwise seek to influence a governmental decision affecting a person or entity with whom the officer or employee is discussing or negotiating an agreement concerning future employment.

### **SEC. C9.108. APPOINTMENTS AND NOMINATIONS**

No person shall give or promise, and no officer or employee of the City and County may solicit or accept, any money or other valuable thing in consideration for (i) the person's nomination or appointment to any City and County office or employment, or promotion or other favorable City and County employment action, or (ii) any other person's nomination or appointment to any City and County office or employment or promotion or other favorable City and County employment action.

### **C9.109. VOTING ON OWN CHARACTER OR CONDUCT**

(a) Prohibition. No officer or employee of the City and County shall knowingly vote on or attempt to influence a governmental decision involving his or her own character or conduct, or his or her appointment to any office, position, or employment.

(b) Exceptions. Nothing in this section shall prohibit an officer or employee from (i) responding to allegations, applying for an office, position, or employment, or responding to inquiries; or (ii) participating in the decision of his or her board, commission, or committee to choose him or her as chair, vice chair, or other officer of the board, commission, or committee.

### **C9.110. DECISIONS INVOLVING FAMILY MEMBERS**

(a) Prohibition. No officer or employee of the City and County may make, participate in making, or otherwise seek to influence a decision of the City and County regarding an employment action involving a relative. Nothing in this section shall prohibit an officer or employee from acting as a personal reference or providing a letter of reference for a relative who is seeking appointment to a position in any City department, board, commission or agency other than the officer or employee's department, board, commission or agency or under the control of any such department,

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## LEGAL TEXT OF PROPOSITION E (CONTINUED)

board, commission or agency.

(b) Delegation. A Department Head who is prohibited under subsection (a) from participating in an employment action involving a relative shall delegate in writing to an employee within the department any decisions regarding such employment action.

(c) Definitions. For purposes of this section, the term "employment action" shall be limited to hiring, promotion, or discipline, and the term "relative" shall mean a spouse, domestic partner, parent, grandparent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, first cousin, and includes any similar step relationship or relationship created by adoption.

### C9.111. DISCLOSURE OF PERSONAL, PROFESSIONAL AND BUSINESS RELATIONSHIPS

(a) Disclosure. A City officer or employee shall disclose on the public record any personal, professional or business relationship with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the officer or employee where as a result of the relationship, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned. For the purposes of this section, the minutes of a public meeting at which the governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the offices of the City officer or employee's department, board, commission or agency shall constitute the public record.

(b) Penalties. A court may void any governmental decision made by a City officer or employee who fails to disclose a relationship as required by subsection (a) if the court determines that: (1) the failure to disclose was willful; and (2) the City officer or employee failed to render his or her decision with disinterested skill, zeal, and diligence and primarily for the benefit of the City. No other penalties shall apply to a violation of this section, provided that nothing in this section shall prohibit an appointing authority from imposing discipline for a violation of this section.

(c) Regulations. The Ethics Commission may adopt regulations setting forth the types of personal, professional and business relationships that must be disclosed pursuant to this section.

### C9.112. GIFTS

(a) Prohibition on bribery. No person shall offer or make, nor officer or employee shall accept, any gift with the intent that the City officer or employee will be influenced thereby in the performance of any official act.

(b) General gift restrictions. In addition to the gift limits imposed by California Government Code section 89503, section 3.1-101 of the Campaign and Governmental Conduct Code and any subsequent amendments to those sections, no officer or employee of the City and County shall solicit or accept any gift in excess

of \$100 in a calendar year from a person who the officer or employee knows or has reason to know is a restricted source. For purposes of this subsection, the term gift has the same meaning as under California Government Code section 89503 and any subsequent amendments to that section.

(1) Restricted Source. For purposes of this section, a restricted source means: (A) a person doing business with or seeking to do business with the department of the officer or employee; (B) any person who during the prior 12 months knowingly attempted to influence the officer or employee in any legislative or administrative action.

(2) Adjustment of gift limits. The Ethics Commission is authorized to adjust annually the gift limits imposed by this section to reflect changes in the California Consumer Price Index.

(c) Gifts from subordinates. No officer or employee shall solicit or accept any gratuity in money or other valuable thing, either directly or indirectly, from any subordinate or employee or from any candidate or applicant for a position as employee or subordinate under him or her. The Ethics Commission shall issue regulations implementing this section, including regulations exempting voluntary gifts that are given or received for special occasions or under other circumstances in which gifts are traditionally given or exchanged.

(d) Additional Restrictions. Nothing in this section shall prohibit a City department, agency, board or commission from imposing additional gift restrictions on its officers or employees.

### C9.113. INCOMPATIBLE ACTIVITIES

(a) Prohibition. No officer or employee of the City and County may engage in any employment, activity, or enterprise that the department, board, commission, or agency of which he or she is a member or employee has identified as incompatible in a statement of incompatible activities adopted under this section. No officer or employee may be subject to discipline or penalties under this section unless he or she has been provided an opportunity to demonstrate that his or her activity is not in fact inconsistent, incompatible or in conflict with the duties of the officer or employee.

(b) Statement of Incompatible Activities. Every department, board, commission, and agency of the City and County shall, by August 1 of the year after which this section becomes effective, submit to the Ethics Commission a statement of incompatible activities. No statement of incompatible activities shall become effective until approved by the Ethics Commission after a finding that the activities are incompatible under the criteria set forth in subsection (c). After initial approval by the Ethics Commission, a department, board, commission or agency of the City and County may, subject to the approval of the Ethics Commission, amend its statement of incompat-

ible activities. The Ethics Commission may, at any time, amend the statement of incompatible activities of any department, board, commission or agency of the City and County.

(c) Required Language. Each statement of incompatible activities shall list those outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers and employees of the department, board, commission, or agency of the City and County. This list shall include, but need not be limited to, activities that involve: (1) the use of the time, facilities, equipment and supplies of the City and County; or the badge, uniform, prestige, or influence of the City and County officer or employee's position for private gain or advantage; (2) the receipt or acceptance by an officer or employee of the City and County of any money or other thing of value from anyone other than the City and County for the performance of an act that the officer or employee would be required or expected to render in the regular course of his or her service or employment with the City and County; (3) the performance of an act in a capacity other than as an officer or employee of the City and County that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of the City and County officer or employee's department, board, commission or agency; and (4) time demands that would render performance of the City and County officer or employee's duties less efficient. The Ethics Commission may permit City boards and commissions to exclude any required language from their statement of incompatible activities if their members, by law, must be appointed in whole or in part to represent any profession, trade, business, union or association.

(d) Meet and Confer. No statement of incompatible activities or any amendment thereto shall become operative until the City and County has satisfied the meet and confer requirements of State law.

(e) Notice. Every department, board, commission and agency of the City and County shall annually provide to its officers and employees a copy of its statement of incompatible activities.

(f) Existing Civil Service Rules. Rules and Regulations relating to outside activities previously adopted or approved by the Civil Service Commission shall remain in effect until statements of incompatible activities are adopted pursuant to this section.

### C9.114. PROHIBITION ON DUAL OFFICE HOLDING

Any person holding an office under the City and County with an annual salary in excess of \$2,500, whether by election or by appointment, who shall, during his or her term of office, hold or retain any other office with such a salary under the government of the United States, the

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## LEGAL TEXT OF PROPOSITION E (CONTINUED)

State of California, or the City and County shall be deemed to have thereby vacated the office held by him or her under the City and County. For the purposes of this section, the term salary does not include: (1) a stipend, per diem, or other payment provided for attendance at meetings; or (2) health, dental, or vision insurance, or other non-cash benefits.

### **C9.115. PROHIBITING MEMBERS OF BOARDS AND COMMISSIONS FROM CONTRACTING WITH THE CITY AND COUNTY**

(a) Definitions. For purposes of this section, the following definitions shall apply:

(1) Board or Commission. The term "board or commission" means an appointed board or commission created by Charter or ordinance of the City and County, but does not include advisory boards or commissions.

(2) Business. The term "business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, or other legal entity or undertaking organized for economic gain.

(3) City and County. The term "City and County" includes any commission, board, department, agency, committee, or other organizational unit of the City and County of San Francisco.

(4) Contract. The term "contract" means any agreement to which the City and County is a party, other than a grant funded in whole or in part by the City and County or an agreement for employment with the City and County in exchange for salary and benefits.

(5) Subcontract. The term "subcontract" means a contract to perform any work that a primary contractor has an agreement with the City and County to perform.

(b) Prohibition. No member of a board or commission of the City and County shall, during his or her term of office, contract or subcontract with the City and County, the San Francisco Redevelopment Agency, the San Francisco Housing Authority, the San Francisco Unified School District, or the San Francisco Community College District, where the amount of the contract or the subcontract exceeds \$10,000.

(c) Exceptions. This section shall not apply to the following contracts or subcontracts:

(1) A contract or subcontract with a non-profit organization;

(2) A contract or subcontract with a business with which a member of a board or commission is affiliated unless the member exercises management and control over the business. A member exercises management and control if he or she is:

(A) An officer or director of a corporation;

(B) A majority shareholder of a closely held corporation;

(C) A shareholder with more than five percent beneficial interest in a publicly traded corporation;

(D) A general partner or limited partner with

more than 20 percent beneficial interest in the partnership; or

(E) A general partner regardless of percentage of beneficial interest and who occupies a position of, or exercises management or control of the business;

(3) A contract or subcontract with the City and County entered into before a member of a board or commission commenced his or her service; or

(4) An agreement to provide property, goods or services to the City and County at substantially below fair market value.

(d) Limitation. Failure of a member of a board or commission to comply with this section shall not be grounds for invalidating any contract with the City and County.

### **C9.116. PROHIBITION ON REPRESENTING PRIVATE PARTIES BEFORE OTHER CITY OFFICERS AND EMPLOYEES – COMPENSATED ADVOCACY**

(a) Prohibition. No officer of the City and County shall directly or indirectly receive any form of compensation to communicate orally, in writing, or in any other manner on behalf of any other person with any other officer or employee of the City and County with the intent to influence a government decision.

(b) Exceptions. This section shall not apply to any communication by: (1) an officer of the City and County on behalf of the City and County; (2) an officer of the City and County on behalf of a business, union, or organization of which the officer is a member or full-time employee; (3) an associate, partner or employee of an officer of the City and County, unless it is clear from the totality of the circumstances that the associate, partner or employee is merely acting as an agent of the City and County officer; or (4) a City officer acting in his or her capacity as a licensed attorney representing clients in communications with the City Attorney's Office, outside legal counsel hired by the City, or representatives of the City who are named in a pending litigation matter.

(c) Waiver. The Ethics Commission may waive the prohibitions in this section for any member of a City board or commission who, by law, must be appointed to represent any profession, trade, business, union or association.

### **C9.117. REFERRALS**

No officer or employee of the City and County shall: (a) receive any money, gift or other thing of economic value from a person or entity other than the City and County for referring a member of the public to a person or entity for any advice, service or product related to the processes of the City and County; or (b) condition any governmental action on a member of the public hiring, employing, or contracting with any specific person or entity. The Ethics Commission may waive the restriction in subsection (b) if the Commission determines that granting a waiver is necessary for the proper administration of a governmental

program or action.

### **C9.118. DISCLOSURE OR USE OF CONFIDENTIAL CITY INFORMATION**

No current or former officer or employee of the City and County shall: (a) willfully or knowingly disclose any confidential or privileged information, unless authorized or required by law to do so; or (b) use any confidential or privileged information to advance the financial or other private interest of himself or herself or others. Confidential or privileged information is information that at the time of use or disclosure was not subject to disclosure under the Sunshine Ordinance or California Public Records Act.

### **C9.119. PROHIBITION ON POLITICAL ACTIVITY**

(a) Solicitation of Contributions. No City officer or employee shall knowingly, directly or indirectly, solicit political contributions from other City officers or employees or from persons on employment lists of the City. Nothing in this section shall prohibit a City officer or employee from communicating through the mail or by other means requests for political contributions to a significant segment of the public which may include City officers or employees.

(b) Political Activities in Uniform. No City officer or employee shall participate in political activities of any kind while in uniform.

(c) Political Activities on City Time or Premises. No City officer or employee may engage in political activity during working hours or on City premises. For the purposes of this subsection, the term "City premises" shall not include City owned property that is made available to the public and can be used for political purposes.

### **C9.120. PROHIBITION ON USE OF PUBLIC FUNDS FOR PRINTED GREETING CARDS**

(a) Definitions. The term "greeting card" means any printed card that celebrates or recognizes a holiday.

(b) Prohibition. No public funds may be used to design, produce, create, mail, send or deliver any printed greeting card. The Controller of the City and County of San Francisco shall, in the Controller's sole discretion, determine whether a payment is prohibited under this section.

The Controller's decision regarding whether a payment is prohibited under this section is final.

### **C9.121. POST-EMPLOYMENT RESTRICTIONS**

(a) All Officers and Employees.

(1) General Post-Employment Restrictions.

(A) Permanent restriction on representation in particular matters. No former officer or employee of the City and County, after the ter-

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## LEGAL TEXT OF PROPOSITION E (CONTINUED)

mination of his or her service or employment with the City shall, with the intent to influence, act as agent or attorney or otherwise represent any other person (except the City and County) before any court or before any state, federal, or local agency or any officer or employee thereof by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter:

(i) in which the City and County is a party or has a direct and substantial interest;

(ii) in which the former officer or employee participated personally and substantially as a City officer or employee;

(iii) which involved a specific party or parties at the time of such participation; and

(iv) which is the same matter in which the officer or employee participated as a City officer or employee.

(B) Permanent restriction on assisting others in particular matters. No former officer or employee of the City and County after the termination of his or her service or employment with the City shall aid, advise, counsel, consult or assist another person (except the City and County) in any proceeding in which the officer or employee would be precluded under subsection (A) from personally appearing.

(C) Exception for testimony. The prohibitions in subsections A and B do not prohibit a former officer or employee of the City and County from testifying as a witness, based on the former officer's or employee's personal knowledge, provided that no compensation is received other than the fees regularly provided for by law or regulation of witnesses.

(D) One year restriction on communicating with former department. No former officer or employee of the City and County for one year after termination of his or her service or employment with the City shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government for which the officer or employee served.

(E) Waiver. (i) At the request of a former City officer or employee, the Ethics Commission may waive any of the restrictions in subsections (a)(1)(A), (a)(1)(B) and (a)(1)(D) if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage. The Ethics Commission shall adopt regulations implementing this provision. (ii) The Ethics Commission may waive any of the restrictions in subsections (a)(1)(A), (a)(1)(B) and (a)(1)(D) for members of City boards and commissions who, by law, must be appointed to represent any profession, trade, business, union or association.

(F) Future Employment.

(A) Future Employment With Parties That Contract With The City. No officer or employ-

ee of the City shall, for a period of one year after termination of City service or employment, be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the 12 months prior to the officer or employee leaving City service where the officer or employee personally and substantially participated in the award of the contract.

(B) Waiver. At the request of a former City officer or employee, the Ethics Commission may waive the prohibition in subsection (a)(2)(A) if the Commission determines that imposing the restriction would cause extreme hardship for the former City officer or employee. The Ethics Commission shall adopt regulations implementing this provision.

(b) Mayor and Members of the Board of Supervisors.

(1) One year restriction on communicating with City departments. For purposes of the one-year restriction under subsection (a)(1)(D), the "department" for which a former Mayor or member of the Board of Supervisors served shall be the City and County and the prohibition in subsection (a)(1)(D) shall extend to communications with:

(A) a board, department, commission or agency of the City and County;

(B) an officer or employee of the City and County;

(C) an appointee of a board, department, commission, agency, officer or employee of the City and County; or

(D) a representative of the City and County.

(2) City service. No former Mayor or member of the Board of Supervisors shall be eligible for a period of one year after the last day of service as Mayor or member of the Board of Supervisors, for appointment to any full time, compensated employment with the City and County. This restriction shall not apply to a former Mayor or Supervisor elected to an office of the City and County, appointed to fill a vacancy in an elective office of the City and County, or appointed to a board or commission in the executive branch.

### C9.122. AIDING AND ABETTING

No person shall knowingly and intentionally provide assistance to or otherwise aid or abet any other person in violating any of the provisions of this Chapter.

### C9.123. FILING OF FALSE CHARGES

No person shall knowingly and intentionally file with the Ethics Commission, the District Attorney or the City Attorney any false charge alleging a violation of this Chapter.

### C9.124. PROVISION OF FALSE OR MISLEADING INFORMATION; WITHHOLDING OF INFORMATION; AND DUTY TO COOPERATE AND ASSIST.

(a) Prohibition. No person shall knowingly and intentionally furnish false or fraudulent evidence, documents, or information to the

Ethics Commission, District Attorney or City Attorney or knowingly and intentionally misrepresent any material fact, or conceal any evidence, documents, or information relevant to an investigation by the Ethics Commission, District Attorney or City Attorney of an alleged violation of this Chapter.

(b) Duty to Cooperate and Assist. The Ethics Commission, District Attorney or City Attorney may request and shall receive from every City officer and employee cooperation and assistance with an investigation into an alleged violation of this Chapter.

### C9.125. PENALTIES AND ENFORCEMENT

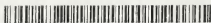
(a) Criminal Penalties. Any person who knowingly or willfully violates any of the City's conflict of interest and governmental ethics laws shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$10,000 for each violation or by imprisonment in the County jail for a period of not more than one year in jail or by both such fine and imprisonment.

(b) Civil Penalties. Any person who intentionally or negligently violates any City conflict of interest or governmental ethics law shall be liable in a civil action brought by the City Attorney for an amount up to \$5,000 for each violation.

(c) Injunctive Relief. The City Attorney or any resident may bring a civil action on behalf of the people of San Francisco to enjoin violations of or compel compliance with a conflict of interest or governmental ethics law. No resident may commence a civil action under this section without first notifying the City Attorney in writing of the intent to file a civil action under this section. If the City Attorney fails to notify the resident within 120 days of receipt of the notice that the City Attorney has filed or will file a civil action, the complainant may file the action. No resident may file an action under this section if the City Attorney responds within 120 days that the City Attorney intends to file an action or has already filed a civil action. No resident may bring an action under this section if the Ethics Commission has issued a finding of probable cause arising out of the same facts, the District Attorney has commenced a criminal action arising out of the same facts, or another resident has filed a civil action under this section arising out of the same facts. A court may award reasonable attorney's fees and costs to any resident who obtains injunctive relief under this section.

(d) Administrative Penalties. Any person who violates any of the City's conflict of interest or governmental ethics laws shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter. In addition to the administrative penalties set forth in the Charter, the Ethics

(Continued on next page)



## LEGAL TEXT OF PROPOSITION E (CONTINUED)

Commission may issue warning letters to City officers and employees.

(e) Statute Of Limitations. No person may bring a criminal, civil or administrative action under this section against any other person more than four years after the date of the alleged violation.

### C9.126. SEVERABILITY

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Chapter and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

### C9.127. ETHICS COMMISSION.

The powers and duties of the Ethics Commission are governed by Charter Sections 15.100, et seq., and Appendix C, Sections C3.699-10—C3.699-16.







164 F.3d 221  
United States Court of Appeals,  
Fifth Circuit.

Robert HOOVER, Doctor; Texas Faculty  
Association, Plaintiffs-Appellees,  
v.

Dan MORALES, individually and in his  
official capacity as Attorney General of the  
State of Texas; Barry Thompson, Doctor in  
his official capacity as Chancellor of the  
Texas A&M University System, Defendants-  
Appellants.

No. 97-50734, Dec. 31, 1998.

Professors and faculty association brought § 1983 action challenging constitutionality of Texas state university policy and state appropriations rider prohibiting university professors and other state employees from acting as consultants or expert witnesses on behalf of parties opposing state in litigation. Professors and association moved for preliminary injunction. The United States District Court for the Western District of Texas, James R. Nowlin, J., granted motion. State attorney general and university chancellor appealed. The Court of Appeals, Robert M. Parker, Circuit Judge, held that: (1) *Pullman* abstention was inappropriate; (2) fact that one is paid to be an expert witness does not make his testimony "commercial speech"; (3) challenged restrictions had effect of curtailing speech on matters of public concern, and state's interest in preventing state employees from speaking in a manner contrary to state's interests did not outweigh free speech rights of employees, particularly as applied to expert testimony by faculty members; and (4) restrictions violated First Amendment by drawing distinction between state employee speakers based on content of employees' relative speech.

Affirmed.

DeMoss, Circuit Judge, concurred in the result and filed a separate opinion.

Opinion, 146 F.3d 304, superseded.

West Headnotes (12)

- 1 Injunction⇐Nature and Scope of Provisional Remedy  
Injunction⇐Grounds and Objections

A preliminary injunction is an extraordinary equitable remedy that may be granted only if the plaintiff establishes four elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is denied; (3) that the threatened injury outweighs any damage that the injunction might cause the defendant; and (4) that the injunction will not disserve the public interest.

Cases that cite this headnote

- 2 Federal Courts⇐Trial De Novo  
Federal Courts⇐Preliminary Injunction;  
Temporary Restraining Order  
Federal Courts⇐Equity in General and Injunction  
Injunction⇐Hearing and Determination

The four elements required for grant of preliminary injunction are mixed questions of law and fact, and thus Court of Appeals reviews the factual findings of the district court only for clear error, but reviews its legal conclusions de novo, and though the ultimate decision whether to grant or deny a preliminary injunction is reviewed only for abuse of discretion, a decision based on erroneous legal principles is reviewed de novo.

Cases that cite this headnote

- 3 Federal Courts⇐Questions of State or Foreign Law Involved

Under "*Pullman* abstention", federal courts should not determine the federal constitutional implications of state law when that law has not yet been authoritatively construed by the state courts, and the law could be given a construction by the state courts which would avoid the constitutional dilemma.

Cases that cite this headnote

- 4 Federal Courts⇐First Amendment; Freedom of Religion, Speech and Press

*Pullman* abstention was inappropriate in constitutional challenge to state appropriations rider prohibiting state employees from acting as consultants or expert witnesses on behalf of parties opposing state in litigation, despite contention that there were open questions of state law as to whether rider applied to pro bono expert testimony and to expert testimony against political subdivisions of state, as opposed to state directly, as constitutional overbreadth problem posed by rider could not be avoided by any interpretation which its language would bear. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

5 Constitutional Law⇒Difference in Protection Given to Other Speech

Commercial speech is generally less protected than other speech under First Amendment. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

6 Constitutional Law⇒What Is "Commercial Speech"

The fact that one is paid to be an expert witness does not make his testimony "commercial speech," for purposes of determining extent of First Amendment protection. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

7 Constitutional Law⇒What Is "Commercial Speech"

The defining element of "commercial speech," for purposes of determining extent of First Amendment protection, is not that the speaker is paid to speak, but rather that the speech concerns the economic interests of the speaker and his audience. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

8 Constitutional Law⇒Public or Private Concern

Constitutional Law⇒Efficiency of Public Services

The test for governmental restriction of its employees' speech, under *Pickering*, is essentially in two parts: first, district court must determine whether state's action or policy restricts speech of its employees on matters of public concern; if so, then district court must weigh interest of employee in freedom of expression and his audience's legitimate need for access to the information against government's interest, as employer, in promoting efficiency of public services it performs through its employees. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

9 Colleges and Universities⇒Staff and Faculty Constitutional Law⇒Public or Private Concern States⇒Evidence

Texas state university policy and state appropriations rider prohibiting state employees from acting as consultants or expert witnesses on behalf of parties opposing state in litigation had effect of curtailing speech on matters of public concern, and state's interest in preventing state employees from speaking in a manner contrary to its interests did not outweigh free speech rights of employees, particularly as applied to expert testimony by faculty members. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

10 Colleges and Universities⇒Staff and Faculty Constitutional Law⇒Employees States⇒Evidence

Texas state university policy and state appropriations rider prohibiting state employees from acting as consultants or expert witnesses on behalf of parties opposing state in litigation violated First Amendment by drawing a distinction between state employee speakers based on the content of the employees' relative speech. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

11 Constitutional Law—Content-Based Regulations or Restrictions

A statute is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

12 Constitutional Law—Content-Based Regulations or Restrictions

Regulations which permit the government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

Attorneys and Law Firms

~~221~~ R. James George, Jr., Renea Hicks, Evan Scott Polikov, George, Donaldson & Ford, Austin, TX, for Plaintiffs-Appellees.  
James C. Todd, Asst. Atty. Gen., Austin, TX, for Defendants-Appellants.

Appeal from the United States District Court for the Western District of Texas.

Before REAVLEY, DeMOSS and PARKER, Circuit Judges.

Opinion

ROBERT M. PARKER, Circuit Judge:

We *sua sponte* withdraw our prior opinion, *Hoover v. Morales*, 146 F.3d 304 (5th Cir.1998), and substitute the following:

I.

FACTS & PROCEDURAL HISTORY

At issue in this case are two Texas state policies, one

legislative and one administrative, which have the effect of prohibiting state employees from acting as consultants or expert witnesses on behalf of parties opposing the State in litigation. The first such policy is Texas A&M University System ("TAMUS") policy No. 31.05, which prohibits university professors from taking employment as consultants or expert witnesses when doing so would create a conflict with the interests of the State. The second policy is in the form of an "expert witness rider" attached to the Texas Legislature's 1997 appropriations bill. The rider provides:

Because of an inherent conflict of interest, none of the funds appropriated by this Act shall be expended in payment of salary, benefits, or expenses of any state employee who is retained as or serves as an expert witness or consultant in litigation against the state, unless the state employee serves in that capacity on behalf of a ~~224~~ state agency on a case in which the state agency is in litigation against another state agency.

Appropriations Act 1997-99, art. IX, § 2(5); Tex. Sess. Law Serv. at 6352.

Certain professors, who have been retained or have volunteered on a *pro bono* basis to testify in various litigation against the State,<sup>1</sup> and the Texas Faculty Association filed suit under § 1983 against the Texas Attorney General and the TAMUS Chancellor, seeking to enjoin enforcement of the "expert witness rider" and TAMUS policy No. 31.05, on the grounds that these policies offend the First Amendment and the Equal Protection clause of the Fourteenth Amendment. The district court granted the plaintiffs' requested preliminary injunction and the State appeals. The State argues that the district court should have abstained from deciding the merits of the constitutional challenge under the *Pullman* doctrine. Alternatively, the State argues that the district court abused its discretion by granting the preliminary injunction on the merits.

II.

LAW & ANALYSIS

A.

Standard of Review

12 A preliminary injunction is an extraordinary equitable remedy that may be granted only if the plaintiff establishes four elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is denied; (3) that the threatened injury outweighs any damage that the injunction might cause the defendant; and (4) that the injunction will not disserve the public interest. These four elements are mixed questions of law and fact. Accordingly, we review the factual findings of the district court only for clear error, but we review its legal conclusions *de novo*. Likewise, although the ultimate decision whether to grant or deny a preliminary injunction is reviewed only for abuse of discretion, a decision based on erroneous legal principles is reviewed *de novo*.

*Sunbeam Products, Inc. v. West Bend Co.*, 123 F.3d 246, 250 (5th Cir.1997), citing *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir.1989). All the arguments on this appeal concerning the merits of the preliminary injunction focus on the first element—likelihood of success on the merits of the constitutional challenge.

B.

Abstention

34 *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941), established that federal courts should not determine the federal constitutional implications of state law when that law has not yet been authoritatively construed by the state courts, and the law could be given a construction by the state courts which would avoid the constitutional dilemma. See *Word of Faith World Outreach Center Church, Inc. v. Morales*, 986 F.2d 962, 967 (5th Cir.1993). The State argues that there are two such open questions under the “expert witness rider” which are in need of authoritative state court interpretation before a federal court can address its constitutional implications, i.e., whether the rider applies to *pro bono* expert testimony, and whether the rider applies to expert testimony against political subdivisions of the State, as opposed to the State directly.<sup>2</sup>

Abstention is inappropriate in this case, because the constitutional overbreadth problem posed by the expert witness rider cannot <sup>225</sup> be avoided by any interpretation which its language will bear.

C.

Is Speech Still Free If You Get Paid For It?

567 There is a side-debate in this case about whether testimony by a state employee acting as a paid expert witness is “commercial speech” or just “speech”. The difference is critical, as commercial speech is generally less protected. *Central Hudson Gas & Elec. Corp. v. Public Service Commission*, 447 U.S. 557, 563, 100 S.Ct. 2343, 2350, 65 L.Ed.2d 341 (1980). In this case, we are dealing with just “speech”. If all it takes to make speech commercial is that the speaker is paid to say it, then every writer with a book deal, every radio D.J., and every newspaper and television reporter is engaged in commercial speech. “It is well settled that a speaker’s rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak.” *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 801, 108 S.Ct. 2667, 2680, 101 L.Ed.2d 669 (1988). Likewise, the fact that one is paid to be an expert witness, does not make his testimony commercial speech. *Central Hudson*, 447 U.S. at 561, 100 S.Ct. at 2349 (defining commercial speech as “expression related solely to the economic interests of the speaker and its audience”) (citing cases). Therefore, the defining element of commercial speech is not that the speaker is paid to speak, but rather that the speech concerns the “economic interests of the speaker and its audience.” See, e.g., *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 116 S.Ct. 1495, 134 L.Ed.2d 711 (1996)(product advertisement), *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995)(solicitation of legal services).

D.

Pickering & Its Progeny

“The problem in any case is to arrive at a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Pickering v. Board of Education*, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734-35, 20 L.Ed.2d 811 (1968).

8 Thirty years ago in *Pickering*, the Supreme Court distilled a test for governmental restriction of its employees’ speech. The test is essentially in two parts. First, the district court must determine whether the State’s action or policy restricts the speech of its employees on matters of public concern. *Pickering*, *supra* at 568, 88 S.Ct. 1731; *Connick v. Myers*, 461 U.S. 138, 145-149,



103 S.Ct. 1684, 1689-1691, 75 L.Ed.2d 708 (1983). If so, then the district court must weigh the interest of the employee in freedom of expression and his audience's legitimate need for access to the information against the government's interest, "as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering*, *supra* at 568, 88 S.Ct. 1731; *Connick*, *supra* at 142, 103 S.Ct. 1684; *Waters v. Churchill*, 511 U.S. 661, 668, 114 S.Ct. 1878, 1884, 128 L.Ed.2d 686 (1994); *United States v. National Treasury Employees Union*, 513 U.S. 454, 465-466, 115 S.Ct. 1003, 1012, 130 L.Ed.2d 964 (1995); *Board of County Commissioners v. Umbehr*, 518 U.S. 668, 116 S.Ct. 2342, 2347-48, 135 L.Ed.2d 843 (1996).

I

### Matters of Public Concern

9 TAMUS policy No. 31.05 and the expert witness rider both have the effect of curtailing speech on matters of public concern in this case. For example, some of the parties in this case have been retained as expert witnesses in the State of Texas suit against the tobacco companies. Although the specific testimony to be offered by the faculty-member plaintiffs may be highly esoteric and of little interest to the public, that testimony bears on the addictive nature of cigarettes/nicotine, its health consequences and resulting public costs, which are matters of public concern. Ultimately, a ban on testimony by state employees in litigation against ~~the~~ the State, such as TAMUS Policy No. 31.05, or a refusal to fund the salary and benefits of state employees who testify in litigation against the State, such as the expert witness rider, can be expected to curtail speech on a wide variety of matters of public concern.

ii.

### The Competing Interests

The plaintiffs' right is generally identified as the right to speak freely on matters of public concern. More specifically, it is the right to serve as (*pro bona*) or be retained as (for hire) an expert witness or consultant in litigation against the State (expert witness rider) or when doing so would create a "conflict of interest" with the State (TAMUS policy No. 31.05). Balanced against that,

under *Pickering*, is the State's interest "as an employer, in promoting the efficiency of the public services it performs through its employees."

The justification offered by the State is the State's right to prevent its employees from acting contrary to the State's interests. The State argues that an inherent conflict of interest is created by state employees acting as or being retained as consultants or expert witnesses for the opposition in litigation against the State. Since the State has an interest in preventing such conflicts of interest, the expert witness rider and TAMUS policy No. 31.05 are designed to prevent state employees from speaking against the State when doing so would create a conflict with the interests of the State. Boiled down to its core, the State is simply arguing that the State's interest is in preventing state employees from speaking in a manner contrary to the State's interests.

Whatever else we might say about that "justification", the State's amorphous interest in protecting its interests is not the sort which may outweigh the free speech rights of state employees under *Pickering*. The notion that the State may silence the testimony of state employees simply because that testimony is contrary to the interests of the State in litigation or otherwise, is antithetical to the protection extended by the First Amendment. The scope of state interests which may outweigh the free speech rights of state employees is much narrower than that. Indeed, the only state interest acknowledged by *Pickering* and its progeny, which may outweigh the right of state employees to speak on matters of public concern, is the State's interest, "as an employer, in promoting the efficiency of the public services it performs through its employees."

In this case, the State has not identified how the State's interest in promoting efficiency of the public services it performs through its employees will be adversely affected by allowing state employees to serve as or be retained as expert witnesses or consultants. We may safely assume that there will be occasions when the State's interest in efficient delivery of public services will be hindered by a state employee acting as an expert witness or consultant, and therefore, the expert witness rider or TAMUS policy No. 31.05 would legitimately curtail that employee's speech. However, the problem with the rider and policy No. 31.05 is the quantity and quality of speech they will curtail, which would not adversely affect the interest of the State in efficient delivery of public services. That is, by their operation, the expert witness rider and TAMUS policy No. 31.05 would likely serve to silence those whose speech would not adversely affect the efficiency of the public services performed by the State through its employees. Specifically, this Court does not see how the expert testimony of the faculty-member plaintiffs in this case will adversely affect the efficient delivery of

131 Ed. Law Rep. 652, 14 IER Cases 1867 educational services by the institutions in which these faculty members serve. Even if such an adverse impact might occur, the State has not identified it. The State bears the burden of justifying these restrictions, and when it enacts a "wholesale deterrent to a broad category of expression by a massive number of potential speakers", the burden of justification is indeed heavy. *National Treasury Employees Union*, 513 U.S. at 466-67, 115 S.Ct. at 1013. In this case, the State's burden proved too heavy, and having identified the flaws in the expert witness rider and TAMUS policy No. 31.05, the district court properly enjoined their enforcement.

**227 E.**

**Content-Based Restriction**

10 An additional basis for enjoining enforcement of the expert witness rider and TAMUS policy No. 31.05 is that they draw a distinction between state employee speakers based on the content of the employees' relative speech. The one who testifies as an expert witness or acts as a consultant on behalf of the State is protected. The one who testifies as an expert witness or acts as a consultant on behalf of those who oppose the state in litigation is punished.<sup>3</sup>

1112 "A statute is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech." *Simon & Schuster, Inc. v. Members of New York State Crime Victims Board*, 502 U.S. 105, 115, 112 S.Ct. 501, 508, 116 L.Ed.2d 476 (1991), citing *Leathers v. Medlock*, 499 U.S. 439, 447, 111 S.Ct. 1438, 1443-44, 113 L.Ed.2d 494 (1991). See also *R.A.V. v. City of St. Paul*, 505 U.S. 377, 383, 112 S.Ct. 2538, 2542, 120 L.Ed.2d 305 (1992)(holding that government restriction of otherwise unprotected speech ("fighting words") on the basis of ideas expressed thereby, is unconstitutional content-based regulation). "Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Id.*, quoting *Regan v. Time, Inc.*, 468 U.S. 641, 648-49, 104 S.Ct. 3262, 3266-67, 82 L.Ed.2d 487 (1984). Therefore, the district court's decision to enjoin enforcement of the expert witness rider and TAMUS policy No. 31.05 may be justified on this alternative basis as well.

**III.**

**CONCLUSION**

The district court properly refused to abstain from addressing the constitutionality of the expert witness rider, because no matter how it is construed by the Texas courts, the constitutional problem cannot be avoided. The district court properly granted the preliminary injunction against enforcement of TAMUS policy No. 31.05 and the expert witness rider, because they both will cause the censorship of more speech by state employees than may be justified in order to protect the efficient delivery of public services. Furthermore, the expert witness rider and TAMUS policy No. 31.05 are presumptively impermissible content-based regulations of otherwise protected speech. Therefore, we affirm the district court's decision to enjoin the enforcement of these policies.

As we previously have stated, there may be occasions when the State's interest in efficient delivery of public services will be hindered by a state employee acting as an expert witness or consultant. Certainly the State's interests heighten when the employee happens to be a policy maker. We can hypothesize examples of legislative or administration rules limiting expert testimony which would not violate the First Amendment, including rules regulating outside employment that do not turn on the content of any speech related activity that may be part of the outside employment. Moreover, the opinion should not be taken to decide or draw into question other kinds of rules regulating arguably expressive conduct by public sector employees. See, e.g., *Weaver v. United States Information Agency*, 87 F.3d 1429 (D.C.Cir.1996); *Vicksburg Firefighters Assoc., Local 1686 v. City of Vicksburg*, 761 F.2d 1036, 1040 (5th Cir.1985); *Zook v. Brown*, 865 F.2d 887 (7th Cir.1989); *Arceneaux v. Treen*, 671 F.2d 128 (5th Cir.1982). But our task in this case requires us to apply a Pickering case-by-case analysis, and in doing so we conclude that the expert witness rider and TAMUS policy No. 3105 are impermissibly overbroad. Our opinion does not foreclose consideration of rules and regulations aimed at limiting expert testimony of faculty members or other state employees which adhere to our First Amendment jurisprudence.

**AFFIRMED.**

**228** DeMOSS, Circuit Judge, specially concurring:

I concur only in the result.

The only issue before this Court is whether the district court abused its discretion by granting a temporary injunction enjoining the enforcement of Texas A&M University System Policy 31.05 and Regulation 31.0501 (the "TAMUS Policy") and the "Expert Witness Rider" attached to the Appropriations Act 1997-99, art. IX, §

131 Ed. Law Rep. 652, 14 IER Cases 1867 2(5) (the "Rider"). The Order of the district court granting that injunction does not address and does not constitute any final determination concerning:

a. whether the district court would apply the abstention doctrine of *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941) and *Word of Faith World Outreach Center Church, Inc. v. Morales*, 986 F.2d 962 (5th Cir.1993);

b. whether the "speech" in this case is "commercial speech";

c. whether the speech in this case relates to "matters of public concern";

d. whether a balancing of interest between the rights of the employee and the rights of the state as employer under *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968) would require a result in favor of plaintiff/appellees;

e. whether the TAMUS policy or the Rider constitute an unconstitutional content based restriction on the free speech rights of the plaintiffs/appellees under *United States v. National Treasury Employees Union*, 513 U.S. 454, 115 S.Ct. 1003, 130 L.Ed.2d 964 (1995).

Likewise, the district court did not file any findings of fact and conclusions of law on these issues for us to review.

In my view this case raises a serious and fundamental issue not previously decided by the United States Supreme Court or this Court. That is, whether the State of Texas or one of its state universities can prohibit a state employee or a full-time professor at the university from serving as a compensated expert witness against the state

when the subject matter of his testimony and the basis of his qualifications as an expert are directly connected with, and are the product of, his employment by the state. That issue was expressly left undecided by the Supreme Court in *National Treasury Employees* and needs far more factual development and legal analysis by the parties and the Court than it has received on the hearing for preliminary injunction.

Our task on this appeal is much narrower than the decision penned by the majority. We are simply to decide whether, based upon the limited evidence presented at this early stage of the litigation, we believe that the district court's decision is so wanting for support that it constitutes an abuse of discretion. I can imagine several reasons why the district court might have found it appropriate to grant an injunction. For example, the expert testimony relationships, which are the subject of this case appear to have been entered into prior to the effective date of the Rider; and raise an issue concerning whether the Rider should be retroactively applied against the plaintiffs during the pendency of this suit. Where I differ from the majority is that I would have neither assumed to know the reasoning of the district court nor presumed to include that reasoning in an opinion disposing of the more narrow preliminary injunction question.

Consequently, I concur with the majority that the district court did not abuse its discretion, but I decline to join in the discussion and commentary by the majority relating to matters which, in my view, are not raised by this appeal.

#### Parallel Citations

131 Ed. Law Rep. 652, 14 IER Cases 1867

#### Footnotes

- 1 E.g.: Prof. Robert Hoover, Dr. Finis Welch and Dr. Cecil Reynolds of Texas A&M have been retained as expert witnesses for the defense in the State of Texas law suit against various tobacco companies; Prof. Frank Skilleen of the Texas Tech University School of Law has volunteered his services on a pro bono basis to members of a Lubbock, Texas, neighborhood association opposing state permitting of a nearby incinerator.
- 2 The State concedes that the district court properly reached the merits of TAMUS policy No. 31.05 and of the "expert witness rider" to the extent that the rider prohibits state employees from acting as paid expert witnesses in litigation against the state directly. Appellant's Brief, pp. 24-26.
- 3 It is this discriminatory treatment of state employees based on the content of their speech which prompted the plaintiffs' Equal Protection challenge. Our resolution of the plaintiff's First Amendment claim makes it unnecessary to discuss the merits of plaintiffs' Equal Protection challenge.



# GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

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February 10, 2011

Confidential

San Francisco Ethics Commission  
25 Van Ness Avenue, Ste. 220  
San Francisco, CA 94102

RE: Judy Melinek: Denial of Appeal of Advance Written Determination, San Mateo Superior Court Case No. CIV 4811542, Wolkoff v. AMR/County of San Mateo, et al.

Members of the Ethics Commission:

I am the attorney representing the family of decedent Steven Wolkoff. Mr. Wolkoff tragically died on June 21, 2008 after a motor vehicle accident as a result of sequelae of multiple traumatic injuries, status post attempted resuscitation. On behalf of his family my office has undertaken representation to hold accountable those causing and contributing to Steven's death in civil proceedings filed in San Mateo County Superior Court.

In the course of our investigation and based on the San Mateo Coroner's Pathology Report it has been learned that the attempted emergency resuscitation performed on Steven Wolkoff was done in a grossly negligent fashion and contributed to Steven's death. Recently, The San Mateo Superior Court issued an order finding that there was sufficient evidence of culpability to allow the case to proceed to trial.

My office has retained Judy Melinek, MD to consult with and assist my office in understanding the pathologic findings and conclusions of the San Mateo Coroner and to comment on cause of death and the subsequent storage and release of Steven's remains. Dr. Melinek is uniquely qualified because of her training and work experience to provide expert consultation on this case. In our research we have not discovered anyone else possessing the necessary qualifications willing to assist us in this matter.

February 10, 2011

Page 2 of 3

It has been brought to my attention that Dr. Melinek's superiors in the San Francisco Medical Examiner's office, and the Office of the City Administrator, have recently denied Dr. Melinek the right to work as a contracted consultant to my office, entirely on her own time, and completely outside of her official position as an Assistant Medical Examiner, contending that her service as an expert consultant and witness in the Wolkoff case may infringe on "important working relationships" between the San Francisco Medical Examiner's Office and San Mateo County and AMR. Please understand that she is not being asked to comment on the conduct of the paramedics, only on how their attempted interventions were a substantial factor in Mr. Wolkoff's death.

In review of the San Francisco Department of Human Resources, Statement of Incompatible Activities, I note that the San Francisco Charter permits any person to seek a written opinion from the Ethics Commission with respect to that person's duties under provisions of the Charter or any City ordinance relating to conflicts of interest and governmental ethics. Dr. Melinek has informed me that she is requesting such an opinion. This letter is in support of Dr. Melinek to provide an invaluable public service not only to my clients but to all residents of the County of San Mateo.

The denial of Dr. Melinek's participation in this case appears to be directed at, and certainly has the effect of limiting the victims of negligent conduct by public entities and their contractors from obtaining the evidence necessary to sustain their burden of proof in the civil case. As I am sure you understand there is an extremely limited pool of qualified individuals expert in the forensic analysis of cause of death, virtually all of whom are in working relationships with various coroners' offices. The pool is even more limited to the few who do private consulting.

The effect of interpreting the SIA in such a way that litigants are not able to obtain necessary and honest opinions from the most well qualified forensic scientists when that testimony may lead to a finding that a public entity or its contractor is legally responsible serves only to perpetuate suppression of the truth to the benefit of the public entity and does not benefit the public at large or the individual litigants. In my view this not only ethically improper, but runs counter to the mission of the Medical Examiner's office.

I find it hard to understand how allowing an honest appraisal of the cause of death and critique of the standard of care in San Mateo can impact adversely the relationship between the County of San Mateo/AMR and the City & County of San Francisco unless the purpose of limiting the testimony of Dr. Melinek is to assist the County of San Mateo/AMR in their attempt to avoid the just consequences of their actions.

If it is the truth that we are after, access to the truth should be paramount and should be the highest ethical aspiration of the San Francisco Medical Examiner. Unfortunately, the actions of the Chief Medical Examiner and the Acting City Administrator appear

February 10, 2011

Page 3 of 3

solely to impede the ascertainment of the truth. The result intended or not, protects the legally responsible parties by suppressing the truth. Rather than promoting the finding of truth so that justice can be attained for the Wolkoff family and the citizens of San Mateo County and California, the decision to enjoin Dr. Melinek from participating as an expert witness on behalf of the Wolkoff family effectively assures that justice will not be served.

It appears from the documentation I have seen that nothing more than a hypothetical worry that some vague, undefined adverse impact might occur between CCSF and San Mateo County if Dr. Melinek is allowed to serve a role in discovering the truth of Steven's death. Any such impact, adverse or otherwise, is merely speculative and should never serve as the basis for enjoining Dr. Melinek's right to free speech or my clients' right to contract freely with a most qualified expert.

The Ethics Commission must not allow unfettered, discretionary power in the hands of the Chief Medical Examiner to decide who gets the truth and who doesn't. Absent a clear and convincing showing by the Medical Examiner's office of actual irreparable harm to the reputation or integrity of the office, or a clear violation of an ethical duty by Dr. Melinek, this Commission has a responsibility to allow Dr. Melinek to consult with and testify on behalf of private citizens outside of her capacity as assistant Medical Examiner even against other public entities or its contractors.

Very truly yours,



Steven J. Brewer

SJB/sb

117640v.1

**WALKER & LYONS, L.L.P.**

**Attorneys At Law  
1700 Irving Place  
Shreveport, LA 71101**

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February 9, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

To Whom It may Concern:

I write on behalf of Dr. Judy Melinek of your Medical Examiner's Office in support of her appeal from an adverse ruling regarding her ability to maintain a private practice.

Having been engaged in a civil rights practice here in the Deep South for over forty years, I am outraged that anyone would try to prevent an expert of her quality from assisting in the prosecution of social justice issues.

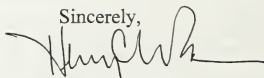
Dr. Melinek was my expert in a civil case where corrections officers ("COs") employed at a local parish (county) jail stood accused of beating a pre-trial detainee to death. Her assistance was simply invaluable.

Quite often in beating death cases of this kind, the autopsy is done by a coroner hired by the parish (county) operating the jail facility. Predictably, such an autopsy report will be contrived so as to clear the offending COs. In this very situation, and without leaving San Francisco, Dr. Melinek was able to provide the legitimate and accurate information that blew up the local coroner's findings. Within a week of her telephone deposition by opposing counsel, the matter was appropriately resolved. Without her, the family of the African-American deceased would surely have been denied the justice without which our legal system collapses.

I would urge reconsideration of Dr Melinek's case. She seems to have been historically able to conduct a private practice without restricting her duties for

your City. Please don't let this fall through the cracks. We need her!

Sincerely,

A handwritten signature in black ink, appearing to read 'Henry C. Walker', with a long horizontal flourish extending to the right.

Henry C. Walker

DANG and TRACHUK

Attorneys At Law  
1939 Harrison Street  
Suite 913  
Oakland, California 94612

Douglas Y. Dang (1942-2006)  
Thomas J. Trachuk  
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February 9, 2011

VIA US MAIL AND EMAIL

San Francisco Ethics Commission  
25 Van Ness Ave, Suite 220  
San Francisco, CA 94102

**RE: Judy Melinek, M.D.**

To the Members of the San Francisco Ethics Commission:

I have been an attorney for 31 years specializing in representing cities, counties and public agencies when they have been sued for personal injuries, civil rights violations and wrongful death. My clients include the City of Alameda, Alameda County, the City of Pleasanton, Alameda Reuse and Redevelopment Agency, San Francisco Redevelopment Agency and others in the Bay Area.

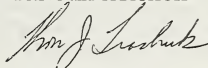
In a number of cases, including one very high profiled wrongful death case in which I was lead counsel for the City of Alameda, I have had the good fortune of working with Dr. Melinek. I have retained Dr. Melinek as an expert forensic pathologist to assist in the defense of my public entity clients. Her brilliance and dedication in assisting my clients and myself in determining the manner and cause of death have been invaluable and often the tipping point in deciding whether to settle or go to trial.

I know from speaking with my defense bar colleagues that Dr. Melinek has assisted the State of California and other public entities. In view of the dearth of the experienced impartial forensic pathologists in the Bay Area it would be a major loss to public entity defendants if Dr. Melinek is prohibited from providing her expert assistance.

I respectfully urge the Ethics Commission to continue to permit Dr. Melinek to provide her expertise in assisting public entities and their counsel.

Very truly yours,

DANG and TRACHUK



Thomas J. Trachuk

TJT/co

cc: Judy Melinek, MD

**PAUL EDMOND STEPHAN**

Attorney-At-Law  
33 New Montgomery, 6<sup>th</sup> Floor  
San Francisco, CA 94105  
(415) 979-2011

---

February 10, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: **Judy Melinek, M.D.**

Dear Commissioners:

I wish to go on record supporting the fine work of Judy Melinek as a Board Certified Forensic Pathologist who has provided first rate expert analysis to civil litigation cases I have had the privilege to work on.

Secondly, I believe it is a disservice to Bench, the Bar and litigants to restrict access to pathologists, such as Dr. Melinek, for matters that have absolutely no nexus to her employment with the City of San Francisco.

In my dealings with Dr. Melinek, she has constantly complied with all City Ethics Laws with regards to her consultation for me in expert matters. She has never consulted with me on city time, never used city facilities and has never leveraged her position in order to obtain work as a consultant in any other case I am aware of. Overall, her forensic pathology work has been first rate and has assisted resolution of cases outside of the San Francisco Court jurisdiction.

One of the most significant uses of a qualified, Board Certified Forensic Pathologist is to determine legal issues arising out of a death. The qualified pool of experts in this field is very limited. The qualified experts in this field also have to be routinely engaged in the "clinical practice" of forensic pathology in order to stay current in many of the methods of forensic pathology. Therefore, typically, the most qualified pathologists are those who are still actively engaged in pathology services for a municipality. To remove those highly qualified persons from the legal process would do a disservice to both sides.

I am at a loss to see how it can be incompatible for Dr. Melinek to consult with me on a case arising out of a death in another State or County having absolutely no relationship to any service provided by the City of San Francisco. Yet, it is my understanding that there has been some claim that a pathologist from the City of San Francisco is in some type of conflict situation providing consulting services to a law firm engaged in a litigation hundreds of miles from San Francisco. That has simply not occurred in any case I have worked with Dr. Melinek on.



I believe I have some experience dealing with actual and perceived conflicts as I have served as a Deputy District Attorney, a Deputy County Counsel, a Police Officer, a United States Military Officer and a practicing lawyer in numerous jurisdictions in the country. I have an appreciation when there is a conflict on both an ethical level and a legal level. Dr. Melinek's work presents no such conflict for the City of San Francisco.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Edmond Stephan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Paul Edmond Stephan, Esq.  
(SBN 075081)

THE HALEY LAW OFFICES  
A Professional Corporation



February 14, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: Judy Melinek, M.D.

To Whom It May Concern:

I am a trial attorney. I have been in practice for almost 30 years. I am a member of numerous trial lawyer organizations. I am most proud of my membership in The American Board of Trial Advocates because its members are both plaintiff and defense attorneys. Membership is by invitation only, and you must have extensive jury trial experience to be a member. I represent primarily plaintiffs.

In my work, I frequently retain medical legal experts. I understand the Commission has precluded Judy Melinek M.D. from consulting and testifying in a medical malpractice case on the basis it will impede the City and County's relationship with those entities. I write to implore you to allow her to do these consultations.

It is critical for parties to be able to find, identify and retain knowledgeable, experienced and qualified experts. In her field, Dr. Melinek is one of the best. She is accessible, easy to work with and absolutely candid in her opinions about the cases that she sees. To lose her as an expert would be a great loss to our civil justice system. You only need read recent news articles involving local pathologists to find why Dr. Melinek is such an asset.

The real question is why Dr. Melinek's truthful and professional assistance in the case would infect San Francisco's relationship with these other parties. The only explanation is you and those parties are concerned that Dr. Melinek's consultations would assist the victim of some negligence occasioned by those parties. They are trying to use their influence with San Francisco to prevent her from offering her honest opinions, good or bad. If we are talking about ethics, It seems to me unethical for San Francisco to prohibit one of their most knowledgeable physicians to consult in a case because the negligent party who injured some poor victim will be upset with the City if Dr. Melinek tells the truth. The commission should welcome Dr. Melinek's outside consultation as long as she is truthful.


February 14, 2011

Page 2

Lets also not forget that by allowing Dr. Melinek to consult, a claim or potential claim against one of San Francisco's partners might be avoided. She would only be consulted by someone who trusts her, knowing full well that her truthful opinion will either help or hurt. If it hurts, a case may be over.

Ultimately, the Commission's only concern should be is that the opinions Dr. Melinek offers in the case are well founded, reasoned and, most importantly, truthful. Indeed, you should reject the efforts by your partners to stifle the truth from being revealed. Your great city should not participate in what we have long called a conspiracy of silence.

Very truly yours,



Matthew D. Haley  
MDH:jr

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**MATTHEW L. MILLER\***  
email: [mmiller@meyersonlawfirm.com](mailto:mmiller@meyersonlawfirm.com)

\*Admitted in Pennsylvania and New Jersey

February 8, 2011

**VIA E-MAIL**

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

**RE: Dr. Judith Melinek, Forensic Pathologist**

Dear Ethics Commission:

I have retained Dr. Judith Melinek to work with my office as a forensic pathologist in three Civil cases over the past six years. Each case involved a Civil claim where a crucial issue at trial was the cause of death. These cases arose in jurisdictions considerable distance from San Francisco; specifically, the Federal Court for the Western District of Washington, the Federal Court for the Eastern District of Pennsylvania, and lastly the Philadelphia Court of Common Pleas. Dr. Melinek reviewed all of the applicable medical records, all work done by the relevant Medical Examiners' Offices, authored an expert report, and testified at a deposition.

In each instance, Dr. Melinek's independent conclusions were consistent with findings from the Medical Examiner's Office in each of the designated jurisdictions. Based on her exceptional credentials, hard work, and ability to articulate, Dr. Melinek made a very forceful and convincing presentation. Most importantly, for your purposes, her work complimented the work of other Medical Examiners' Offices and was a tribute to the City of San Francisco and the San Francisco Medical Examiner's Office. The national reputation that Dr. Melinek is well on the way to developing is well deserved and a credit to the City of San Francisco and the Chief Medical Examiner. Thank you for your consideration of this matter.

Sincerely,

  
Jack Meyerson

JM/rjb

# LAW OFFICES OF ANNEE DELLA DONNA

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delladonna@cox.net

February 8, 2011

San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220

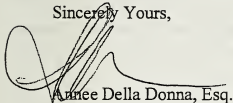
San Francisco, CA 94102

Re: Dr. Judy Melinek

Dear Commissioners:

We are writing this letter on behalf of Dr. Judy Melinek in support of her appeal disallowing her testimony in a civil action. In civil matters, in order to seek justice it is imperative litigants have access to qualified, competent forensic pathologists. Without Dr. Melinek's thorough investigation into the cause of death, many families would never know the truth about their loved one's demise. As civil attorneys we cannot always rely upon a hospital autopsy for finding the truth, especially when the hospital is a potential defendant. We therefore need an unbiased pathologist to discover what no other medical expert can - the true cause of death.

Sincerely Yours,



Annee Della Donna, Esq.

Attorneys

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CHANCELL FITTING  
SBN: 203378

LINDA LEES  
SBN: 102507

ELYA FRANGOS  
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February 8, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: Dr. Judy Melinek

Dear Ethics Commission:

Our firm represents families of loved ones who have died with life insurance policies. We have retained Dr. Judy Melinek over the last several years in three cases to assist us in determining the cause of death. In those cases, the insurance companies took the position that benefits were not covered by the terms of the life insurance policies.

In one case, Dr. Melinek disagreed with the decision of the life insurance company and, based on her report, our clients were able to recover the benefits without filing a lawsuit. In the two other cases, Dr. Melinek agreed with the life insurance companies' determination of causes of action.

Dr. Melinek "calls them the way she sees them" and we greatly value her honesty and integrity. Not only has she saved our clients considerable expenses and aggravation, but she performed a valuable service to the judicial system by eliminating lawsuits that should not be filed. I cannot imagine how Dr. Melinek's honest opinions could possibly cause any concern to the City and County of San Francisco.

I would be pleased to provide any further information requested.

GALINE, FRYE & FITTING

  
\_\_\_\_\_  
John N. Frye

JNF:clp



**From:** jason jungreis (jasonjungreis@gmail.com)  
**To:** drjudymelinek@yahoo.com;  
**Date:** Thu, February 10, 2011 11:49:17 AM  
**Cc:**  
**Subject:** Re: Letters of support for Dr. Melinek

Judy,

Let me suggest that you simply print and initial it for me: the only catch in such a thing would be if the initialing was unauthorized, and please know that here I am expressly authorizing you to do so.

Thanks.

Jason

JUNGREIS LAW

760 Market Street, #753

San Francisco, CA 94102

T: 415-283-8594; F: 415-592-1656; jzj@jungreislaw.com

February 10, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

re: Denial of Dr. Judy Melinek=s right to employment as consultant

To the Ethics Commission:

This is a letter in support of Dr. Judy Melinek=s right to employment as a consultant. As you know, Dr. Melinek has ably served San Francisco as a consultant in the Office of the Chief Medical Examiner. However, she has sought and been denied the opportunity to serve as a consultant in a private matter that is independent of San Francisco and independent of her work for San Francisco. I know Dr. Melinek and I believe it would be to the great detriment of San Francisco to risk losing her services, and as a San Franciscan I resent a new standard being applied to her that may result in costly litigation.

I have reviewed the law in this area, including cases involving right to employment, free speech, and conflicts of interest, and it is my opinion that Dr. Melinek=s outside consultancy work does not affect San Francisco and does not affect Dr. Melinek=s ability to provide appropriate continued services to San Francisco. I am concerned that I do not see evidence that a reasoned opinion by the City Attorney was sought or received. It is my opinion that there is a risk of litigation due to the failure to review appropriate law and precedents.

I am confident that a careful review will necessitate a reversal of this decision. I look forward to hearing of your decision in this important matter.

Sincerely,

Jason Jungreis

cc: Dr. Melinek

**LAW OFFICES OF BONNER & BONNER**

475 Gate Five Road, Suite 212

Sausalito, CA 94965

Tel: (415) 331-3070

Fax: (415) 331-2738

February 8, 2011

The San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220,  
San Francisco, CA 94102

Phone: (415) 252-3100/Fax: (415) 252-3112  
ethics.commission@sfgov.org

To the Ethics Commission,

**RE: Appeal of Denial on Advance Written Determination (AWD)  
Judy Melinek, M.D.  
Assistant Medical Examiner**

I am a civil rights attorney for over 31 years, with a practice representing victims of United States and California constitution violations. My firm has employed Dr Melinek as an Expert Medical Examiner and found her testimony to be invaluable. She was truly an Expert Witness for the truth, for the jury, for the court, not an advocate of my client, even though we hired her. Her disclaimer to the court and jury that she was testifying on her own time, and not representing the City & County of San Francisco, was announced at the outset of her testimony.

The consumer and trial advocate bar is in great need of experts with the wealth of experience, knowledge and training that Dr. Melinek possesses. Victims of civil rights violations are prejudiced if experts are only drawn from the private sector because often the expert for the opposing side is a public employee Medical Examiner. This carries a positive prejudice in favor of that examiner's testimony as one is testifying not as a "hired gun". Public employee Expert Medical Examiners for the trial bar help to even the playing field, thereby positively creating a balance in our justice system.

Acting City Administrator, Ms. Amy Brown in denying Dr. Melinek's appeal states:  
"I have reviewed your appeal carefully and have decided to deny your appeal of the denial of request for Advance Written Determination. Based on the facts presented in your request, your proposed outside activities is not compatible with your position and would violate the Statement of Incompatible Activities."

Ms. Brown's rationale for the denial of Dr. Melinek's appeal is arbitrary, and not based on a legitimate business or government purpose so as to outweigh Dr. Melinek's constitutional rights of free speech, free association and her due process and liberty interest as is afforded in the first and fourteenth amendments.

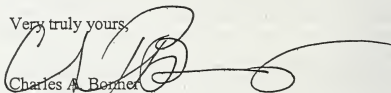
According to Ms. Brown, "Expert witness testimony by Assistant Medical Examiner in which the named party is a vendor of San Mateo County and/or a public agency of San Mateo can and has interfered with the operations of the Medical Examiner's Office in the past, and the practical effect of your proposed activity would disrupt the operations of the office."

Ms. Brown does not cite the manner of the speculative disruption, nor what "practical effect" this disruption would have on the operations of the office. Clearly, the Medical Examiner's office will continue to function to the same high standards with which it now functions, and has functioned during Dr. Melinek's tenure with the office. During this tenure she has testified in several cases involving public entities without one incident of disruption. A government must have a legitimate reason to curtail the constitutional rights of an employee, who is vested with a property interest in her employment. Ms. Brown's rationale for the denial of Dr. Melinek's right to testify in cases not involving the City and County of San Francisco is void of any legitimate or rational basis. Hence, Ms. Brown's denial of Dr. Melinek's right to testify is a constitutional violation of her rights.

The purpose of this letter is to urge you to reverse Ms. Brown's decision and restore Dr. Melinek's rights guaranteed by the United States Constitution.

Thank you for your urgent attention to this matter.

Very truly yours,



Charles A. Berger

HAAPALA, THOMPSON & ABERN, LLP  
ATTORNEYS AT LAW

JOHN E. HAAPALA  
CLYDE A. THOMPSON  
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DAVID SEMEL

JUDITH B. ALTURA, OF COUNSEL  
JODY STRUCK, OF COUNSEL

February 16, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, California 94102

Re: Dr. Judy Melinek

To Whom It May Concern:

The following letter is offered in support of Dr. Judy Melinek's petition to work as a forensic pathologist consultant.

During 2007 and 2008, Dr. Melinek facilitated our defense of a federal civil rights lawsuit involving the in-custody death of a Santa Cruz County Jail inmate. One of the critical issues in this matter was ascertaining the medical cause of the inmate's death. Dr. Melinek's skill and expertise as a forensic pathologist was instrumental in both our defense of this civil lawsuit, and also for the overarching community need to know how and why the inmate died.

There is a wide range in education, skill and expertise for individuals whom hold themselves out to be pathologists. A worst case scenario is when a pathologist offers his or her professional opinion concerning the cause of an individual's death that proves to be misleading, or simply wrong. In these cases, it is essential that we as attorneys, and the community at large, have access to people of the stature of Dr. Melinek to facilitate justice by sharing her insight as an excellent forensic pathologist.

Very truly yours,

HAAPALA, THOMPSON & ABERN, LLP

Clyde A. Thompson  
(Direct Dial 510-550-8557)

CAT/lcd

cc: Dr. Judy Melinek [via e-mail only]



# National Organization of Parents Of Murdered Children, Inc.

*For the families and friends of those who have died by violence.*

---

100 East Eighth Street, Suite B-41 • Cincinnati, OH 45202 • Toll Free: (888) 818-POMC  
Fax (513) 345-4489 • Website: [www.pomc.org](http://www.pomc.org) • Email: [natlpomc@aol.com](mailto:natlpomc@aol.com)

February 14, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: Judy Melinek, M.D.

Dear Commission Members:

Parents Of Murdered Children is the only non-profit organization in this country devoted to providing non-financial support to survivors of homicide. As such, we have intimate knowledge of the problems faced by parents, children, siblings and significant others of homicide victims.

Aside from the immediate trauma, the most devastating experience comes when the survivors must reopen their wounds because a conviction has been overturned on appeal, or even worse, the wrong person was convicted and the murderer has been free for years. For these reasons, this organization has always championed the need for a defendant to have adequate representation and expert consultants of quality equal to those retained by the prosecution.

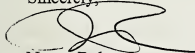
Dr. Melinek has volunteered for Parents Of Murdered Children doing pro bono work by looking at different cases in our Second Opinion Service Program. She has taken many hours with families helping them understand their loved ones death by suicide or if she feels it isn't suicide has helped them with more information to take to their district attorney. We were excited when she offered to volunteer with our organization and her expertise, openness and honesty has helped so many families through the very difficult and painful time of their loved ones death. Having Dr. Melinek and who understands how important it is to survivors that everything possible is being done to solve their case and is sensitive to our members and in seeing that justice is served for these families is invaluable to our organization and to families who need help with questions about their loved ones death.



It has been brought to our attention that the immediate supervisor of Dr. Melinek and the Acting City Administrator intend to deprive the courts of her expertise, even though such expertise is provided on her own time. A similar event happened in Minnesota within the last few years, where a prosecutor pressured a coroner to not allow the forensic pathologist working for the coroner to testify for the defense in a different county. That prosecutor was publicly sanctioned and removed from office by the state bar.

The justice system requires open dialogue by certified experts; in the absence of such experts, the system fails. The recent Frontline show demonstrated the severe shortcomings of the current system; restricting experts from telling the truth will only make the situation worse and confirm to the public that there is no transparency in government. Nor can we ignore the recommendations of the National Academy of Science regarding forensic sciences and the current hearings before the United States Congress.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy Ruhe', with a large, stylized flourish extending to the right.

Nancy Ruhe  
Executive Director



# TUCKER ELLIS & WEST LLP

ATTORNEYS AT LAW

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February 9, 2011

VIA U.S. MAIL

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: Judy Melinek, M.D.

To the Ethics Commission:

We write in support of Judy Melinek, M.D. and her appeal of the denial of the Advance Written Determination for approval to testify as a legal consultant. Our firm has engaged Dr. Melinek as an expert witness in the area of forensic pathology in unrelated cases. The general purpose of these engagements is to review the facts and evidence and opine on the cause of death. In our experience, Dr. Melinek gives her unbiased assessment and professional opinion based on the evidence presented. She operates under the highest ethical standards, and for this reason, and because of her ability, she is a well-respected expert in her field.

A qualified expert witness plays a very important role in litigation. A qualified expert is not an advocate for a litigant. The expert's role is to educate the parties, the judge and the jury. Because of the complexity of many cases where the cause of death is a central question, Dr. Melinek's expertise as a forensic pathologist is particularly useful in synthesizing the evidence and opinions of other experts. The courts would be deprived of a key resource if experienced, independent and ethical pathologists, such as Dr. Melinek, were prohibited from acting as expert witnesses.

Very truly yours,

TUCKER ELLIS & WEST LLP

*Mollie F. Benedict*

Mollie F. Benedict, Esq.

cc: Judy Melinek, M.D.

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CINDY A. DIAMOND

Attorney at Law

58 West Portal Avenue

#350

San Francisco, CA 94127

February 8, 2011

San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220

San Francisco, CA 94102

Re: Private Forensic Practice of Dr. Judy Melinek, M.D.

Dear Ethics Commission:

I am writing this letter in support of Dr. Judy Melinek's appeal from the denial of her request to testify as an expert forensic pathologist in litigation cases.

I am a criminal defense attorney, and have on several occasions used Dr. Melinek in her private capacity as a consulting expert on cases that have relevant medical issues. In my experience, when interpretation of medical evidence it is at-issue, the ability to discuss, consult, and analyze medical records confidentially, and without restriction, is critically important in the preparation of a criminal defendant's case. Such an undertaking may, or may not, lead to preparation of a written report from, or testimony by, the expert. Such an undertaking may also lead to a swift resolution of a criminal case, when no issue of factual controversy is discovered after examination of the medical evidence. In my opinion, formed after having been in practice for over twenty-years, it is ineffective assistance of counsel and a constitutional violation of my client's rights not to consult with a qualified forensic medical expert when a medical issue of some consequences becomes relevant in a criminal prosecution.

Turning specifically to Dr. Melinek, I understand she is employed by the San Francisco Medical Examiner's office, and accordingly, she is called upon at times to testify in criminal cases in San Francisco. I expect that she is usually called by the prosecution to testify, although I also expect that she would be available to answer questions and testify to factual matter within her knowledge by the defense on cases assigned to her. Such work is not consulting work. In such matters, all within the city and county of San Francisco, her testimony would be given as a examining doctor, with knowledge of the facts of a case, interpreted and explained based on her experience, training, and professional expertise.

San Francisco Ethics Commission

Re: Dr. Judy Melinek, M.D.

February 8, 2011

Page 2

I find it curious, and mildly offensive, to hear that there is a concern that in cases that do not concern opinions about the practice of the San Francisco Medical Examiner's Office, her colleague's work, nor her own, that anyone could suggest Dr. Melinek would have a professional conflict of interest. Dr. Melinek is a highly trained physician, not a partisan. She has no stake in the outcome of the cases on which she consults. I, myself, have had the experience of paying her to consult with me on a case, only to hear her give me opinions that conflict with my goals or the goals of my client. While I may be disappointed when her expertise leads her to conclusions that are contrary to my theory of a case, I would be more disappointed if Dr. Melinek were not able to offer her true opinions and conclusions, no matter their effect. It is precisely because Dr. Melinek is the type of doctor that will not waiver from what her training leads her to conclude, that she is a valuable asset to the litigation community in Northern California. She is not there to persuade. She is there to interpret scientific information based on her knowledge and experience, and on the facts presented to her. She is fundamentally a scientist, and thus not an advocate. Her convictions about her profession and her work lead her to give the same information to either party in a lawsuit, and this is what makes her a credible witness when called to testify.

I urge you to reconsider the initial decision restricting Dr. Melinek's ability to testify due to concerns about potential conflicts of interest. There are few forensic pathologists available for private hire in the greater Bay Area, and I urge you not to limit the pool of these experts by removing her from that number. Dr. Melinek possesses a particular skill that makes her my own medical expert of choice: she has a very clear way of expressing her medical opinions and conclusions orally. Her medical training has not obfuscated her ability to speak in layman's terms in a manner that is understandable to those of us without medical training. This is a critical skill for a litigation expert to have. Please do not deprive us of the ability to hire Dr. Melinek for private litigation purposes. Such a loss would be felt by clients and jurors alike, and would be antithetical to the true administration of justice.

Yours Very Truly, (



Cindy A. Diamond

CAD/bms

**San Francisco  
Ethics Commission**



25 Van Ness Avenue, Suite 220  
San Francisco CA 94102  
Phone 252-3100 Fax 252-3112

# **Report on**

## **San Francisco's Limited**

### **Public Financing Program**

**November 2, 2010 Board of Supervisors Election**

**San Francisco Ethics Commission**

Benedict Y. Hur, Chairperson  
Jamiene S. Studley, Vice-Chairperson  
Beverly Hayon, Commissioner  
Charles L. Ward, Commissioner  
John St. Croix, Executive Director

Prepared by: Shaista Shaikh





# Report of the Board of Supervisors Public Financing Program of 2010

This report is intended to satisfy the requirements set forth in Section 1.156 of the San Francisco Campaign and Governmental Conduct Code, which requires the Ethics Commission to produce a report following the November 2010 election stating:

- The amount of public funds disbursed to campaigns in the election;
- The number of candidates who received public funds;
- The number of nonparticipating candidates;
- The amount of qualified campaign expenditures made by all candidates in that election;
- The amount of independent expenditures made in connection with the election; and
- Other relevant information deemed useful by the Ethics Commission.

The data presented is based on information reported in campaign disclosure statements covering through December 31, 2010 and from the Commission's record of public funds disbursements.

## I. Introduction

San Francisco's public financing program for candidates for the Board of Supervisors was adopted through a ballot measure (Proposition O) in November 2000. The San Francisco Ethics Commission ("Commission") administered the public financing program in elections for candidates for the Board of Supervisors in 2002, 2004, 2006, 2008 and 2010. In 2006, the program was extended to include Mayoral candidates as well.

With respect to the disbursement formula and expenditure ceilings, the program as it was implemented in the 2010 and 2008 supervisorial elections was significantly different from the program that was administered in 2002, 2004, and 2006.<sup>1</sup> The public financing program provides candidates running for the Board of Supervisors or Mayor with partial public funding to fund their campaigns. The Commission developed the program with the intent that it would provide candidates a neutral source of additional funding, encourage more candidates to run for office, allow candidates to spend more time discussing the issues and spend less time fundraising, and encourage candidates to limit their spending.

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<sup>1</sup> See Appendix for a complete overview of the requirements of the public financing program as it was implemented in 2010.

## II. Supervisory Candidates on the November 2, 2010 Ballot and the Amount of Public Funds Disbursed in the November 2, 2010 Election

### A. Candidates Who Sought Office, Whether They Participated in the Public Financing Program and Whether They Were Elected to Office

There are eleven supervisory districts in San Francisco. In 2010, supervisory elections were held in the five even-numbered districts in San Francisco: Districts 2, 4, 6, 8 and 10. A total of 46 candidates in five districts appeared on the November 2010 ballot and 22 of these candidates qualified to receive public funds.

The 22 participants of the public financing program ran for office from four districts: Districts 2, 6, 8, and 10. The race in District 4 did not involve a participating candidate; only the incumbent ran for office in that race. Of the five members of the Board of Supervisors who were elected to office in the November 2, 2010 election, three, or 60 percent of those elected, were participating candidates.

Table 1 below lists candidates for the Board of Supervisors whose names appeared on the November 2, 2010 ballot, whether they participated in the public financing program, and whether the candidates were elected to office.

**Table 1: List of 2010 Supervisory Candidates, Whether They Participated in the Public Financing Program, and Whether They Were Elected to Office<sup>2</sup>**

Candidate	District	Participation Status (P=participating candidate; NP=non-participating candidate)	Whether candidate was elected or defeated
Kat Anderson	2	P	Defeated
Barbara Berwick*	2	NP	Defeated
Mark Farrell	2	NP	Elected
Vilma Guinto Peoro*	2	NP	Defeated
Janet Reilly	2	NP	Defeated
Abraham Simmons	2	P	Defeated
Carmen Chu	4	NP	Elected
Matthew D. Ashe*	6	NP	Defeated
H. Brown*	6	NP	Defeated
Dean Clark	6	NP	Defeated
George Davis*	6	NP	Defeated
Matt Drake	6	NP	Defeated
Glendon "Anna Conda" Hyde	6	NP	Defeated
James Keys	6	P	Defeated

<sup>2</sup> An asterisk ("\*") indicates candidates who were not required to file electronic campaign statements (i.e., candidates who received less than \$5,000 in contributions). Staff believes that the electronic reports capture the information related to contributions and expenditures that is necessary to prepare this report. The cumulative amount of activity by any candidate who filed either Form 470 or 460 in paper form only should not exceed \$4,999.99, which is an amount staff believes will not skew the general information provided in this report. Accordingly, staff did not look to the content of the paper filings to prepare this report. Staff used the same process in gathering data for the reports on the 2002, 2004, 2006 and 2008 public financing programs, thus allowing for a more direct comparison among the 2002, 2004, 2006 and 2008 data.

Jane Kim	6	P	Elected
Jim Meko	6	P	Defeated
Nate Payne	6	NP	Defeated
Theresa Sparks	6	P	Defeated
George Vazhappally*	6	NP	Defeated
Debra Walker	6	P	Defeated
Elaine Zamora	6	P	Defeated
Bill Hemenger	8	P	Defeated
Rafael Mandelman	8	P	Defeated
Rebecca Prozan	8	P	Defeated
Scott Wiener	8	P	Elected
James M. Calloway*	10	NP	Defeated
Malia Cohen	10	P	Elected
Ed Donaldson	10	NP	Defeated
Teresa Duque	10	P	Defeated
Kristine Enea	10	P	Defeated
MJ Marie Franklin	10	NP	Defeated
Rodney Hampton, Jr.*	10	NP	Defeated
Chris Jackson	10	P	Defeated
Ellsworth "Ell" Jennison*	10	NP	Defeated
Nyese Joshua	10	NP	Defeated
Tony Kelly	10	P	Defeated
DeWitt M. Lacy	10	P	Defeated
Geoffrea Morris*	10	NP	Defeated
Steve Moss	10	P	Defeated
Jackie Norman	10	NP	Defeated
Ashley Hawley Rhodes*	10	NP	Defeated
Diane Wesley Smith	10	NP	Defeated
Eric Smith	10	P	Defeated
Lynette Sweet	10	P	Defeated
Marlene Tran	10	P	Defeated
Stephen Weber	10	NP	Defeated
<b>Total 22 participating candidates; 24 non-participating candidates</b>			

## B. The Amount of Public Funds Disbursed in 2010

A total of \$6,452,341 million in the Election Campaign Fund was available for disbursement. On the 59<sup>th</sup> day before the election the Executive Director was required to calculate the Per Candidate Available Disbursement Limit. Prior to this date, eligible candidates could receive up to \$89,000. The Per Candidate Available Disbursement Limit was initially determined to be \$248,166. The final Per Candidate Available Disbursement Limit was \$293,288. The 22 eligible candidates received a total of \$1,477,713 in public funds, an average of \$67,169 per candidate. Because the individual expenditure ceiling was raised for every publicly-financed candidate and the Per Candidate Available Disbursement Limit was greater than \$89,000, candidates were eligible to receive more than \$89,000 based on the amount of matching contributions raised; four of the 22 publicly-financed candidates received more than \$89,000.

Table 2 below provides a breakdown of the amount of public funds disbursed to each qualifying candidate. It also shows the amount of total funds (public plus private) that was available to all candidates, participating and non-participating.

**Table 2: Amount of Public Funds Disbursed as Compared to Total Funds Available to Candidates<sup>3</sup>**

Candidate	District	Amount of Public Funds Disbursed to Participating Candidates	Total Funds Available to Candidates (private funds plus public funds, if any)	Public Funds as a Percentage of Total Funds
Kat Anderson	2	\$53,925	\$81,950	66%
Mark Farrell	2		\$263,198	n/a
Janet Reilly	2		\$363,865	n/a
Abraham Simmons	2	\$56,056	\$92,701	60%
<b>District 2 Total</b>		<b>\$109,981</b>	<b>\$803,714</b>	<b>14%</b>
Carmen Chu	4		\$178,097	n/a
<b>District 4 Total</b>			<b>\$178,097</b>	<b>0%</b>
Dean Clark	6		\$6,178	n/a
Matt Drake	6		\$14,473	n/a
Glendon "Anna Conda" Hyde	6		\$17,803	n/a
James Keys	6	\$40,025	\$56,873	70%
Jane Kim	6	\$90,817	\$217,355	42%
Jim Meko	6	\$44,164	\$61,749	72%
Nate Payne	6		\$3,622	n/a
Theresa Sparks	6	\$85,904	\$171,506	50%
Debra Walker	6	\$76,761	\$150,559	51%
Elaine Zamora	6	\$50,999	\$84,907	60%
<b>District 6 Total</b>		<b>\$388,670</b>	<b>\$785,025</b>	<b>50%</b>
Bill Hemenger	8	\$51,749	\$74,957	69%
Rafael Mandelman	8	\$104,764	\$215,524	49%
Rebecca Prozan	8	\$121,406	\$266,024	46%
Scott Wiener	8	\$140,572	\$312,138	45%
<b>District 8 Total</b>		<b>\$418,491</b>	<b>\$868,643</b>	<b>48%</b>
Malia Cohen	10	\$79,666	\$196,645	41%
Ed Donaldson	10		\$6,165	n/a
Teresa Duque	10	\$56,790	\$92,009	62%
Kristine Enea	10	\$48,590	\$74,185	65%
MJ Marie Franklin	10		\$1,643	n/a
Chris Jackson	10	\$53,745	\$75,405	71%
Nyese Joshua	10		\$1,848	n/a
Tony Kelly	10	\$60,451	\$102,665	59%
DeWitt M. Lacy	10	\$42,682	\$69,247	62%
Steve Moss	10	\$67,095	\$129,389	52%
Jackie Norman	10		\$11,117	n/a
Diane Wesley Smith	10		\$17,079	n/a
Eric Smith	10	\$48,656	\$75,185	65%
Lynette Sweet	10	\$57,439	\$127,388	45%
Marlene Tran	10	\$45,456	\$61,677	74%
Stephen Weber	10		\$11,898	n/a
<b>District 10 Total</b>		<b>\$560,570</b>	<b>\$1,053,545</b>	<b>53%</b>
<b>Total</b>		<b>\$1,477,713</b>	<b>\$3,689,024</b>	<b>40%</b>

<sup>3</sup> Total funds in this table include total monetary contributions, loans, in-kind contributions, public funds and candidates' personal funds used for campaign purposes.

Public grants represented 40 percent of the total funds (public and private) that were available to candidates who received public funding.

### III. Candidate Spending

In 2010, candidate spending totaled \$3,581,175. This figure does not include spending by non-candidates. Table 3 below lists the amounts spent by candidates in 2010. The table also shows the highest level of a candidate's Individual Expenditure Ceiling, if the candidate was publicly financed. Publicly financed candidates were required to limit their expenditures to the amount of their Individual Expenditure Ceiling, which began at \$143,000 and was raised by the Ethics Commission based on the highest level of Total Supportive Funds of a publicly financed candidate's opponents plus the Total Opposition Spending against such publicly financed candidate. Expenditure data includes both paid expenditures and debt.

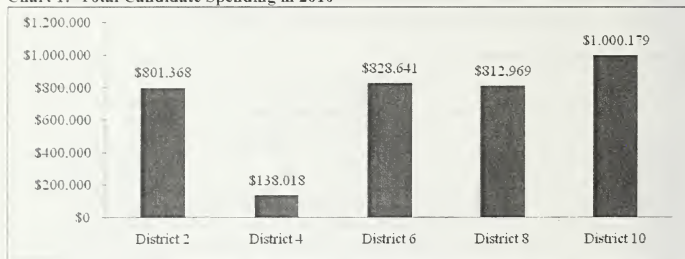
**Table 3: Candidate Spending in 2010**

Candidate	District	Highest Level of Candidate's Individual Expenditure Ceiling	Total Expenditures Incurred
Kat Anderson	2	\$303,000	\$81,950
Mark Farrell	2		\$260,467
Janet Reilly	2		\$365,243
Abraham Simmons	2	\$303,000	\$93,709
<i>District 2 Total</i>			\$801,368
Carmen Chu	4		\$138,018
<i>District 4 Total</i>			\$138,018
Dean Clark	6		\$5,653
Matt Drake	6		\$13,443
Glendon "Anna Conda" Hyde	6		\$15,948
James Keys	6	\$273,000	\$59,048
Jane Kim	6	\$273,000	\$249,969
Jim Meko	6	\$273,000	\$60,776
Nate Payne	6		\$3,762
Theresa Sparks	6	\$283,000	\$183,399
Debra Walker	6	\$273,000	\$149,351
Elaine Zamora	6	\$273,000	\$87,293
<i>District 6 Total</i>			\$828,641
Bill Hemenger	8	\$463,000	\$74,853
Rafael Mandelman	8	\$473,000	\$219,397
Rebecca Prozan	8	\$463,000	\$272,053
Scott Wiener	8	\$493,000	\$246,666
<i>District 8 Total</i>			\$812,969
Malia Cohen	10	\$233,000	\$172,117
Ed Donaldson	10		\$3,044
Teresa Duque	10	\$233,000	\$95,117
Kristine Enea	10	\$233,000	\$72,022
MJ Marie Franklin	10		\$1,563
Chris Jackson	10	\$233,000	\$75,067
Nyese Joshua	10		\$1,836
Tony Kelly	10	\$233,000	\$106,097

DeWitt M. Lacy	10	\$233,000	\$65,940
Steve Moss	10	\$143,000	\$124,118
Jackie Norman	10		\$8,737
Diane Wesley Smith	10		\$16,390
Eric Smith	10	\$213,000	\$75,562
Lynette Sweet	10	\$243,000	\$135,775
Marlene Tran	10	\$233,000	\$34,895
Stephen Weber	10		\$11,898
<b>District 10 Total</b>			<b>\$1,000,179</b>
<b>Total</b>			<b>\$3,581,175</b>

The chart below shows total candidate spending by district.

**Chart 1: Total Candidate Spending in 2010**



#### IV. Spending by Third Parties

In past public financing reports for programs administered in 2002, 2004 and 2006, this section was based upon FPPC Form 465 filings for independent expenditures affecting candidates. After the 2006 supervisorial election, the Campaign Finance Reform Ordinance was amended to require third parties to report independent expenditures, member communications, and electioneering communications on Form SFEC-152(a)-3. Data from Form SFEC-152(a)-3 filings was used to adjust individual expenditure ceilings in 2008. Thereafter, due to further changes in the law, in 2010, third parties were required to report independent expenditures, member communications, electioneering communications on the Ethics Commission's Third Party Disclosure Form, which included reporting that was previously required on the Form SFEC-152(a)-3.

Third party spending in the November 2010 election totaled approximately \$1.3 million (\$1,305,460, according to Third Party Disclosure Form filings; or \$1,201,294, according to FPPC Form 465 filings.)

The table below summarizes the data reported on the Third Party Disclosure Form and Form 465, divided by candidate and district.



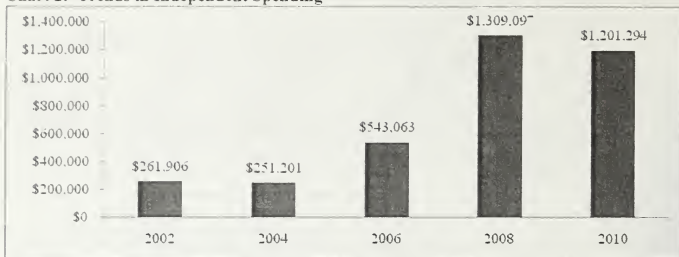
**Table 4: Third Party Spending in 2010**

Affected Candidate	District	SFEC Third Party Disclosure Form		FPPC Form 465	
		Spending to Support	Spending to Oppose	Spending to Support	Spending to Oppose
Mark Farrell	2	\$62,524	\$20,156	\$62,939	\$19,153
Janet Reilly	2	\$58,444	\$148,004	\$59,302	\$148,004
<b>District 2 Spending</b>		<b>\$120,968</b>	<b>\$168,160</b>	<b>\$122,241</b>	<b>\$167,157</b>
Carmen Chu	4			\$11,941	
<b>District 4 Spending</b>				<b>\$11,941</b>	
James Keys	6	\$232			
Jane Kim	6	\$6,454		\$6,222	
Theresa Sparks	6	\$137,975	\$18,108	\$134,086	\$12,152
Debra Walker	6	\$144,102		\$124,696	
<b>District 6 Spending</b>		<b>\$288,763</b>	<b>\$18,108</b>	<b>\$265,004</b>	<b>\$12,152</b>
Rafael Mandelman	8	\$205,461	\$10,202	\$140,363	\$10,202
Rebecca Prozan	8	\$12,037		\$22,061	
Scott Wiener	8	\$189,700	\$107,125	\$195,494	\$96,009
<b>District 8 Spending</b>		<b>\$407,198</b>	<b>\$117,327</b>	<b>\$357,918</b>	<b>\$106,211</b>
Malia Cohen	10	\$17,207		\$3,483	
Chris Jackson	10	\$9,717		\$7,476	
Tony Kelly	10	\$232			
DeWitt M. Lacy	10	\$232			
Steve Moss	10	\$129,527	\$10,295	\$135,434	
Lynette Sweet	10	\$11,335	\$6,391	\$12,277	
<b>District 10 Spending</b>		<b>\$168,250</b>	<b>\$16,686</b>	<b>\$158,670</b>	
<b>Total Third Party Spending</b>		<b>\$985,179</b>	<b>\$320,281</b>	<b>\$915,774</b>	<b>\$285,520</b>

In some cases, there are substantial differences in the values reported, with greater reporting occurring on either of the two forms. Possible causes for the discrepancy include the different thresholds for using the two forms, the different types of communications reported on each form, and unfamiliarity with filing requirements. Furthermore, certain Form 465 filers may have made expenditures within a district that exceeded \$1,000 but were below the \$5,000 threshold that requires disclosure under local law.

The chart below displays independent spending made per election for supervisorial candidates from 2002 to the present. The data is based on FPPC Form 465 filings of independent expenditures.

**Chart 2: Trends in Independent Spending**



It should be noted that during the years 2002 to 2010, campaign finance laws changed from one election to the next, which makes it difficult to determine trends in independent spending. The graph shows a surge of independent spending in 2008 and 2010, compared to previous years. There are many factors that may have contributed to this increase. Such factors include: changes to the provisions of the public financing program; the injunction against contribution limits to committees making expenditures to support or oppose local candidates;<sup>4</sup> more open seats in the November 2008 and 2010 elections than in the previous elections; and the greater availability of public funds that may have stimulated a more competitive race.

## **V. Public Financing at a Glance**

It is difficult to identify the effects of the public financing program on the outcome of the elections. Although public financing has now been implemented in the 2002, 2004, 2006, 2008 and 2010 elections, there are many variables relating to these elections. In 2002, elections took place in districts where only two-year terms had elapsed. In 2004, ranked choice voting was implemented, which caused many prior constants to change, i.e., there were no more run-off elections. In 2002, 2006 and 2010 the even-numbered districts were voted on whereas seats in the odd-numbered districts were voted on in 2004 and 2008. Significant provisions of the public financing program changed over the years. The threshold for qualifying for public financing and the deadline for applying for public financing were changed after the 2002 public financing cycle. The maximum amount of public funds that participants could seek was significantly higher in 2010 and 2008 (it was \$89,000 in 2010 and \$87,500 in 2008) than the maximum amount available in prior years (the amount available in prior years was \$43,750). In addition, the 2008 and 2010 public financing programs had a provision whereby candidates could receive greater than the maximum amount if the Commission determined the Per Candidate Available Disbursement Limit to be greater than the initial disbursement threshold. In 2008 and 2010,

<sup>4</sup> In November 2000, when the voters approved the public financing program by voting for Proposition O, they also approved a \$500 per contributor per year limit on contributions to committees (excluding candidates' own campaign committees) that make expenditures to support or oppose local candidates and an overall contribution limit of \$3,000 per contributor to all committees that make expenditures affecting local candidates. These sections (S.F. C&GC Code § 1114(c)(1) and (c)(2)) are currently not being enforced due to a preliminary injunction issued on September 20, 2007.

participating candidates were required to abide by an individual expenditure ceiling, which did not exist in prior years. In 2008 and 2010, there were additional filing requirements on persons making third party expenditures. In conclusion, it is difficult to distinguish between the effects of these factors from the effects of the public financing program on the outcome of the elections.

However, based on the data provided in this report and reports of prior years, whenever an incumbent is involved in an election, the incumbent wins regardless of whether the incumbent is a participating candidate. Generally in races where no incumbent is involved, a participating candidate wins. The record shows an increase in the overall amount of public funds disbursed between 2002 and 2010. The record also shows an increase in the percentage of candidates who are publicly financed. This data seems to indicate a trend towards greater acceptance of public financing of candidates in elections. The table below provides summary data of the 2010 election as well as data from prior elections.

**Table 5: Summary Data from the 2010 and Past Elections**

<b>Election Year</b>	<b>2002</b>	<b>2004</b>	<b>2006</b>	<b>2008</b>	<b>2010</b>
Amount of Public Funds Disbursed	\$281,989	\$757,678	\$216,784	\$1,315,470	\$1,477,713
Average Amount Disbursed in General Election	\$31,332	\$32,943	\$36,131	\$69,235	\$67,169
Number of Seats up for Election	5	7	5	7	5
Number of Contested Seats	4	7	5	7	4
Percentage of Candidates who were Publicly Financed	32%	35%	23%	45%	48%
Percentage of Elected Candidates who were Publicly Financed	60%	43%	20%	71%	60 %
Percentage of Incumbents Re-Elected	100%	100%	100%	100%	100%
Total Amount of Candidate Spending	\$2,213,316	\$3,654,616	\$1,781,148	\$3,875,551	\$3,581,175
Amount of Independent Spending (Form 465)	\$261,906	\$251,201	\$543,063	\$1,309,097	\$1,201,294



## APPENDIX: Overview of San Francisco's Limited Public Financing Program

### A. Introduction

Under current law, San Francisco's limited public financing program for candidates running for the Board of Supervisors provides eligible candidates up to \$89,000 in the general election (or up to the amount of the Per Candidate Available Disbursement Limit if the Per Candidate Available Disbursement Limit is greater than \$89,000). The total annual cost of the public financing program, including program administration, cannot exceed \$2.75 per year per resident of San Francisco.

### B. Criteria and Conditions for Qualifying for Public Financing

In order to qualify for public financing, a candidate for the November 2010 election was required to:

- seek election to the office of the Board of Supervisors and be eligible to hold office if elected;
- file *Form SFEC-142(a) Statement of Participation or Non-Participation* with the Ethics Commission indicating that he/she intends to participate in the Board of Supervisors Public Financing Program;
- raise at least \$5,000 in qualifying contributions from at least 75 residents of the City in contribution amounts ranging from \$10 to \$100;
- agree to limit spending on his or her campaign to no more than his/her individual expenditure ceiling of \$143,000 or as raised by the Ethics Commission;
- submit a declaration (*Form SFEC-142(b)-1*), a qualifying contributions list (*Form SFEC-142(c)-1*), and supporting documentation to the Ethics Commission to establish eligibility to receive public financing;
- be opposed by a candidate who has qualified for public financing or by a candidate who has received contributions or made expenditures that in the aggregate equal or exceed \$5,000;
- bear the burden of proving that each contribution relied upon to establish eligibility is a qualifying contribution and that all contributions received comply with the Campaign Finance Reform Ordinance ("CFRO");
- bear the burden of proving that expenditures made with public funds were used only for qualified campaign expenditures;
- not make payments to a contractor or vendor in return for the contractor or vendor making a campaign contribution to the candidate; and not make more than a total of 50 payments to a contractor or vendor who has made a contribution to the candidate;
- not accept any loans to the campaign from anyone except the candidate, and not loan more than \$15,000 of the candidate's own money to his/her campaign;
- agree to participate in at least three debates with opponents;
- have paid any outstanding fines owed to the City by the candidate or any of the candidate's campaign committees;

- have filed any outstanding statements, reports or forms owed to the City by the candidate or any of the candidate's campaign committees; and
- have no finding by a court within the past five years that the candidate knowingly, willfully or intentionally violated the CFRO or the campaign finance provisions of the Political Reform Act.

Candidates were prohibited from using public funds to pay administrative, civil, or criminal fines, or to pay for inaugural activities or officeholder expenses. Under the law, all qualified candidates are subject to a mandatory audit.

### C. Applying for Public Funds

In order to be certified by the Executive Director of the Ethics Commission as having met the requirements to receive public financing, candidates were required to submit, along with other items:

- 1) no later than August 6, 2010, the deadline for filing nomination papers, a *Statement of Participation or Non-Participation (Form SFEC-142(a))* indicating an intent to participate in the public financing program; and
- 2) beginning February 2 and no later than August 24, 2010, a *Declaration for Public Funds* along with a list of qualifying contributions (*Forms SFEC-142(b)-1 and SFEC-142(c)-1*) and other supporting material.

Candidates agreed to comply with all the eligibility requirements set forth above by signing and submitting the *Declaration for Public Funds*. On the accompanying list of qualifying contributions, candidates were required to include the contributor's full name, street address, occupation and employer if the contribution was \$100 or more; the total amount contributed; the amount of the contributor's qualifying contribution; the date the qualifying contribution was received; the date the qualifying contribution was deposited; and the deposit batch number. Supporting materials include photocopies of the written instruments used by the contributors to make the qualifying contributions, deposit receipts and other items such as evidence of San Francisco residency. Claims for additional public funds were required to be submitted in a similar manner.

### D. Formula for Disbursing Public Funds

Candidates who were certified as eligible to participate in the public financing program received a grant of \$10,000. After the initial payment of \$10,000, candidates were able to seek additional public funds based on the amount of matching contributions raised and documented in timely claims submitted to the Ethics Commission.<sup>1</sup> The maximum amount of additional public funds that candidates were able to receive was \$79,000.<sup>2</sup> After the initial payment of \$10,000, for each dollar of matching contributions up to the

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<sup>1</sup> A matching contribution is a contribution that is not a qualifying contribution or a loan, is made by an individual who is a resident of San Francisco (other than the candidate or the candidate's immediate family), is not received more than 18 months before the November election, and complies with all the requirements of the CFRO and its implementing regulations.

<sup>2</sup> The exact amount of funds available to each candidate may be less than or greater than \$89,000, depending on the Per Candidate Available Disbursement Limit. Please see Section E below.



next \$10,000 that candidates raised, they received four dollars from the Election Campaign Fund. Thereafter, for each additional dollar of matching contributions raised, candidates received one dollar of public funds until reaching the maximum. The maximum amount of public funds a candidate could have received until the per candidate available disbursement limit was determined was \$89,000, as shown in the table below:

<b>Candidate raises</b>	<b>Election Campaign Fund pays</b>
\$5,000 in qualifying contributions	\$10,000 (initial payment)
Up to \$10,000 in matching contributions	Up to \$40,000 (4 to 1 match)
Up to \$39,000 in matching contributions	Up to \$39,000 (1 to 1 match)
<b>Total available to a qualified candidate</b>	<b>Up to \$89,000</b>

#### E. Per Candidate Available Disbursement Limit

This is the amount of public funds available to each candidate who has qualified to receive public funding. On the 59th day before the election, the Executive Director of the Ethics Commission divides the total amount of non-administrative funds in the Election Campaign Fund by the total number of qualified candidates. The result is the Per Candidate Available Disbursement Limit.

If the per candidate available disbursement limit is less than or equal to \$89,000, candidates will have access to funds from the Election Campaign Fund on a first-come first-served basis up to a maximum of \$89,000. If the Per Candidate Available Disbursement Limit is greater than \$89,000, candidates will have access to the amount of the Per Candidate Available Disbursement Limit, but no candidate may receive public funds that would cause him or her to exceed his or her Individual Expenditure Ceiling. For the November 2, 2010 election, the Per Candidate Available Disbursement Limit was \$293,288.

#### F. Campaign Spending Limits

To receive public funds, candidates were required to agree to limit their spending to the amount of the individual expenditure ceiling, the expenditure ceiling that is established for each candidate for the Board of Supervisors who is certified by the Ethics Commission as eligible to receive public funds. Each candidate's individual expenditure ceiling starts at \$143,000 and may be raised under certain circumstances. The ceiling may be raised in \$10,000 increments if the highest level of Total Supportive Funds of a publicly financed candidate's opponents plus the Total Opposition Spending against such publicly financed candidate exceeds \$143,000 by at least \$10,000.

#### G. Additional Reporting Requirements for Participating and Non-Participating Candidates

All candidates for the Board of Supervisors were required to file *Form SFEC-152(a)-1* if they received contributions, or made expenditures that equaled or exceeded \$5,000. These statements serve to inform the Commission of candidates' financial activities so that the Commission could determine whether a candidate who had applied for public

financing met the requirement of being opposed by a candidate who either qualified to receive public financing or received contributions or made expenditures of \$5,000 or more. If the Ethics Commission certified at least one candidate for the Board of Supervisors as eligible to receive public funds in a district, all candidates for the Board of Supervisors seeking office in the same district were required to file *SFEC-152(a)-2* within 24 hours of receiving contributions or making expenditures that equaled or exceeded \$100,000. Thereafter, such candidates were required to file *Form SFEC152(a)-2* within 24 hours of each time that they received additional contributions or made additional expenditures that equaled or exceeded \$10,000.

#### H. Additional Reporting Requirements for Third party Spending

In a district where the Ethics Commission had certified at least one candidate as eligible to receive public funds, any person who made \$5,000 or more in independent expenditures, electioneering communications, or member communications that clearly identified any candidate for the Board of Supervisors, was required to file a statement within 24 hours of reaching or exceeding the threshold. These statements served to inform the Ethics Commission of Total Supportive Funds and Total Opposition Spending relating to candidates so that the Commission could determine whether the individual expenditure ceiling of any candidate should be adjusted.



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROX  
EXECUTIVE DIRECTOR

## EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of April 11, 2011

### 1. Budget.

The Commission's request an operating budget of \$2,250,000 and \$2,000,000 for the Election Campaign Fund for FY 11-12 has been submitted. The Mayor is expected to propose his budget to the Board of Supervisors on June 1. At this time, the Board of Supervisors is expected to consider the Commission's budget on June 20 and 27. I will be working closely with both the Mayor and the Board regarding the Commission's budget. Recently, the Board of Supervisors approved legislation to appropriate \$1.3 million from the City's General Fund to the Election Campaign Fund.

### 2. November 8, 2011 Election.

Thirty-eight candidates have declared to run for office in November 2011: 31 for Mayor, four for District Attorney and three for Sheriff. Three candidates for Mayor have submitted an application for public funds. The Commission has disbursed a total of \$661,828 to two of these three candidates; the third candidate's application is currently under review.

Candidates for Mayor who are interested in seeking public funding may submit an application for public funds beginning February 8. In order to receive public funds, an interested candidate must demonstrate, among other things, that he/she has received at least \$25,000 in qualifying contributions from at least 250 individuals who reside in the City.

### 3. Investigation and enforcement program.

Since its last regular meeting on March 14, 2011, the Ethics Commission has received no new complaints. There are 24 pending complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	8
Conflict of Interest	5
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	9
<b>TOTAL</b>	<b>24</b>

#### 4. Campaign finance disclosure program.

a. Filing deadline. The next filing deadline that applies to all committees falls on August 1, 2011 for the First Semi-Annual statement, which covers the reporting period ending June 30, 2011. In the interim, staff continues to receive and process campaign statements for other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations.

b. Collection of late filing fees and contribution forfeitures. In the FY 10-11, as of March 31, the Commission collected a total of \$36,110 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$128,979, of which waiver requests are pending for \$93,080; and \$19,869 is pending at the Bureau of Delinquent Revenues.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on pending accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnnie Carter for Community College Board	1226264	Johnnie Carter	6/16/06	\$9,520	\$6,595	\$6,595
2	Committee to Elect M. Valle for Treasurer	1278937	Manuel B. Valle	6/14/07	\$5,525	\$5,525	\$5,525
3	Bill Barnes for District 5	1265969	Alix Rosenthal	1/3/08	\$3,120	\$1,041	<b>\$113</b>
4	Care Not Cash	1244505	Ronald Jin	2/29/08	\$5,331	\$2,156	<b>\$1,856</b>
5	Omar Khalif for Board of Educ.	1287030	Omar Khalif	7/30/09	\$1,800	\$1,775	\$1,775
6	Myrna Lim for District 11 Sup	1306882	Myrna Lim	7/30/09	\$1,180	\$1,180	\$1,180
7	Myrna Lim for District 11 Sup	1256697	Jia Jun Chen	8/20/07	\$3,855	\$2,775	\$2,775
8	San Francisco Women's Political Committee	1243711	Giselle Barry	5/16/06	\$1,906	\$50	\$50
						<b>TOTAL</b>	<b>\$19,869</b>

#### 5. Revenues report.

For FY 10-11, the Commission is budgeted to generate \$78,000 in revenues. As of April 6, 2011, the Commission received and deposited \$90,335 as summarized below. The figure represents collection of approximately 123 percent of expected revenues for FY 10-11. Revenues received and deposited as of April 6, 2011:

Source	Budgeted Amount FY 10-11	Receipts
Lobbyist Fees	\$8,000	\$38,500
Other Ethics General	\$1,000	\$307
Campaign Finance Fines	\$50,000	\$36,110
Campaign Consultant Fees	\$15,000	\$15,650
Lobbyist Fines	\$1,000	\$2,050
Statements of Economic Interests Fines	\$1,000	\$70
Other Ethics Fines	\$1,000	\$1,076
Campaign Consultant Fines	\$1,000	\$2,350
Total	\$78,000	96,113

**6. Draft regulations related to complaints regarding Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force.**

The Sunshine Ordinance Task Force (SOTF) has informed the Commission that its review of draft regulations related to the handling of complaints regarding alleged violations of the Sunshine Ordinance and referrals from the SOTF continues. The SOTF anticipates that it will complete its work sometime this spring.

**7. Lobbyist program.**

As of April 1, 2011, 72 individual lobbyists were registered with the Commission. In FY 10-11, total revenues collected to date amount to \$40,550, which consist of \$38,500 in lobbyist registration fees and \$2,050 in fines. The March 2011 reporting period deadline is April 15, 2011.

**8. Campaign Consultant program.**

As of April 5, 2011, twenty-seven campaign consultants are active and registered with the Commission. \$15,650 in registration fees and \$2,350 in late fines have been collected during the 2010-2011 fiscal year. The next campaign consultant quarterly report deadline is Wednesday, June 15, 2011. Staff will mail and e-mail reminder notices to all active campaign consultants two weeks before the deadline.

**9. Statement of Economic Interests program.**

On March 7, 21, 31, staff facilitated three SEI Trainings.

Reminder notices were sent out on March 22 to Filing Officers regarding the April 1 deadline for SEI-filings such as the Statement of Economic Interests (SEI) and the Sunshine Ordinance Declaration.

From January 1 to March 18, approximately 286 SEI-related filings were entered into SFEDS. From March 19 to April 1, 902 SEI-related forms were filed with the Commission. Staff continues to work on processing the filings.

**10. Outreach and Education.**

On March 9, staff facilitated a Statement of Incompatible Activities Training for the Department on the Environment.

On April 4, staff met with a delegation of 21 officials from the Wuhan City Bureau of Supervision, Wuhan Province, China. The group, which consisted of inspectors who oversee anti-corruption programs, were in the U.S. to learn about ways to control government spending, prevent corruption and improve government efficiency, as well as extending educational opportunities for public employees.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments.

The following are web video trainings available on the Commission website:

- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees
- Medical Examiner's Office SIA Training
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training
- SIA Training for the Department of Building Inspection

The following are the currently scheduled live trainings for 2011:

Candidates' Training: April 12, June 23, and August 9

SIA Training for the Fire Department: May 11

SIA Training for the Planning Department: May 17 and June 14

Respectfully submitted,

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John St. Croix  
Executive Director

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Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
April 11, 2011  
Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 5:32 PM.

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COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamienne Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Shiasta Shaikh, Assistant Deputy Director; Richard Mo, Chief Enforcement Officer; Garrett Chatfield, Investigator/Legal Analyst; Catherine Arugmedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney; Molly Lee, Deputy City Attorney.

OTHERS PRESENT: Judy Melinek, Judson True, Thomas Picarillo, John Gollinger, Steven Brewer, Adam Zanala, and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Memorandum from the Executive Director re: Legislation to amend one-year post-employment restriction, dated April 6, 2011.
- Draft advice letter to Dr. Judy Melinek regarding whether paid expert testimony in a judicial proceeding in San Mateo County violates the Statement of Incompatible Activities of the General Services Agency.
- Report on San Francisco's Limited Public Financing Program.
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission on March 14, 2011.
- Executive Director's Report to the Ethics Commission for the Meeting of April 11, 2011.

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

**III. Consideration of legislation to amend San Francisco Campaign and Governmental Conduct Code section 3.234 to allow an appointed former Mayor to obtain full-time City employment within one year of leaving Mayoral office.**

Chairperson Hur welcomed Commissioner Liu to the Ethics Commission.

Executive Director St. Croix stated that the Board of Supervisors submitted the amendment to section 3.234 for approval by the Ethics Commission. He stated that staff included members of the Board of Supervisors as part of the amendment to ensure consistency within the Code. He also stated that staff included an option for consideration by the Ethics Commission that would narrow the scope of the amendment so an interim mayor would only be allowed to return the position he or she held prior to the mayoral appointment.

Judson True, representing Board of Supervisors' President, David Chiu, stated that the legislation is narrowly crafted and that the situation that this amendment addresses is a rare occurrence.

Responding to Commissioner Liu's question regarding the policy considerations of the amendment, Mr. True stated that the Board of Supervisors wanted to ensure the amendment was narrowly tailored and straight-forward.

Executive Director St. Croix read the proposed change to section 3.234 that would allow a mayor or a member of the Board of Supervisors to return only to a previously held City position.

Commissioner Ward stated that he was not in favor of including the Board of Supervisors in this change to the Code. He stated that the public would not expect that, in upholding a promise to Mayor Lee, the Ethics Commission would choose to include the Board of Supervisors.

Vice-Chairperson Studley stated that she was in favor of the narrow version which only allowed a mayor to return to his or her previously held City employment. She stated that it is important that the Ethics Commission adopt a change consistent with what the voters approved when they adopted this code section.

Commissioner Hayon and Commissioner Liu both separately stated that they also support the narrower provision.

Deputy City Attorney Givner confirmed that the Mayor Lee's previous position was an appointed position and would be subject to re-appointment by a new mayor. He also stated that another option is to require a cap so that an interim mayor could accept a different position as long as the salary that would be received in the new position did not exceed the salary received in the previous position.

Chairperson Hur also stated he supported the narrower provision. He also stated that the salary cap proposal would limit any risk of the interim mayor setting up a "golden parachute" while in office.

Commissioner Liu stated she was in favor of the salary cap option, and also stated that she would be in favor of including the members of the Board of Supervisors in the amendment with that cap.

Chairperson Hur stated that the inclusion of the Board of Supervisors was unnecessary.

Commission Ward stated that finding an interim member of the Board of Supervisors was likely a much easier process than an interim mayor, and that he would not support including members of the Board of Supervisors in this amendment.

Public Comment:

Thomas Picarillo stated that voters are upset by this proposed change. He stated that this code section was a voter adopted provision and that any amendment must further the purpose of the chapter. He stated that the Supervisors made an illegal promise to Mayor Lee and that they are now asking the Ethics Commission to ratify that promise.

John Gollinger stated that he represented the organization San Franciscan's for Clean Government, and that he was surprised to learn of the proposal to include members of the Board of Supervisors in this amendment. He stated that this provision has remained unchanged since its adoption in the Charter in 1932, and that if the Ethics Commission approves the amendment it should consider including a sunset provision.

Chairperson Hur stated that the Ethics Commission is trying to be consistent with the will of the voters.

Commission Liu stated that after listening to the discussion and the public on this issue, she was not in favor of including members of the Board of Supervisors in this amendment.

**Motion 11-04-11-1 (Studley/Ward): Moved, seconded and passed (5-0) to adopt the amendment as follows: Notwithstanding the one year restriction to Subsection (A), a former Mayor who was appointed to that office under Charter Section 13.101.5 to fill a vacancy shall be eligible for appointment to any City employment provided that (i) the former Mayor did not file a declaration of candidacy for election to the office of Mayor after being appointed to that office, (ii) the former Mayor was employed by the City immediately prior to assuming the office of Mayor, and (iii) the salary in the first year of the new employment shall not exceed the salary received by the former Mayor in the City employment that he or she held immediately prior to assuming office as Mayor.**

- IV. Consideration of letter to Dr. Judy Melinek, including formal written advice, regarding section III.B.3 of the Statement of Incompatible Activities of the General Services Agency, which prohibits employees of the Office of the Chief Medical Examiner from providing expert testimony in judicial proceedings unrelated to their official duties unless such employees receive and advance written determination that they may do so.**

Deputy Executive Director Ng introduced the advice letter.

Dr. Melinek stated that the draft letter contains several errors. She stated that it was not true that employees were consulted during the draft SIA process. She stated that it is not incompatible with the department to provide expert testimony in a court proceeding. She stated that it is improper that the advance written determination requires a requestor to disclose potentially confidential information in order to determine whether or not it will be approved. She stated that prior to the SIA adoption, there was no issue with providing expert testimony in a court proceeding in another county. She requested that the SIA be amended to reflect the previous policy.

In response to Commissioner Liu, Dr. Melinek outlined her past work providing expert testimony.

In response to Vice-Chairperson Studley, Dr. Melinek stated that she was only aware of the SIA requirements after it was implemented.

Deputy Executive Director Ng stated that the SIA could not be amended without going through the formal process.

Vice-Chairperson Studley stated that the Ethics Commission could ask the department to consider addressing and/or amending any problems with the SIA.

Chairperson Hur stated that Dr. Melinek appears to be an exceptional expert witness, but the Ethics Commission cannot provide the relief she has requested without the formal process to amend the SIA.

Public Comment:

Steven Brewer stated that he retained Dr. Melinek as an expert witness. He stated that the SIA asks a requestor to answer six questions. He stated that the last question asks if any party already relied on the requestor's abilities. He stated that in this case, he has already relied on Dr. Melinek.

Adam Zanala stated that the SIA policy violates the First Amendment and that political speech is protected.

Vice-Chairperson Studley stated that although the Ethics Commission has no ability to review an advance written determination, she would like the Ethics Commission to contact the department outlining the Ethics Commission's concerns.

Chairperson Hur directed staff to consult with the General Services Agency regarding the SIA.

Dr. Melinek withdrew her request for formal advice.

**V. Staff presentation of public finance report.**

Assistant Deputy Director Shaikh introduced the report.

Chairperson Hur and Vice-Chairperson Studley both thanked Ms. Shaikh and her staff for the excellent work.

Public Comment:

None.

**VI. Closed Session.**

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 (a) and (c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

**Motion 11-04-11-2 (Ward/ Studley): Moved, seconded and passed (5-0) that the Ethics Commission move into closed session.**

The Ethics Commission went into closed session at 7:17 PM.

Public Comment:

None.

**VII. Discussion and vote regarding closed session action and deliberations.**

**Motion 11-04-11-3 (Studley/Ward) Moved, seconded, and passed (5-0) that pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: anticipated litigation.**

The Ethics Commission went into open session at 9:57 PM.

Public Comment:

None.

**VIII. Minutes of the Commission's regular meeting of March 14, 2011.**

**Motion 11-04-11-4 (Ward/Studley): Moved, seconded and passed (5-0) to adopt the minutes of the Ethics Commission's regular meeting of March 14, 2011.**

Public Comment:

None.

**IX. Executive Director's Report.**

Executive Director St. Croix stated there were no highlights in this month's report.

Public Comment:

None.

**X. Items for future meetings.**

None.

Public Comment:

None.

**XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

## **XII. Adjournment.**

**Motion 11-03-11-5 (Studley/Ward): Moved, seconded and passed (5-0) that the Commission adjourn.**

### Public Comment:

None.

The meeting adjourned at 10:00 PM.

Respectfully submitted,

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Garrett Chatfield



Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**May 9, 2011 5:30 P.M.  
and AGENDA**

**Room 408 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Proposed amendments to the Statement of Incompatible Activities (SIA) for the San Francisco Public Library. The Library has recommended changes to its SIA. A staff report is available at the Commission office as well as on the Commission website. (Discussion and possible action.)
- IV. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 (a) and (c) and Sunshine Ordinance section 67.10(d) to discuss existing litigation.

Conference with Legal Counsel: Existing litigation  
Number of cases: 1

McComish et al. v. Bennett et al., U.S. Supreme Court Docket No. 10-239, cert. granted Nov. 29, 2010

- V. Discussion and vote regarding closed session action and deliberations. (Discussion and possible action.)

Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding existing litigation.

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: existing litigation.

- VI. Minutes of the Commission's regular meeting of April 11, 2011. (Discussion and possible action.)

- VII. Policy Priorities. The Commission will discuss progress in the areas of key policies that were approved at its meeting on November 9, 2009: 1) Education and Communication with the General Public; 2) Enforcement; 3) Campaign Finance; 4) Conflicts of Interest; and 5) Campaign Consultant Ordinances. The Commission will also discuss priorities for future work in these areas and possibly auditing, public finance, and budgeting. This discussion is in lieu of an annual retreat.
- VIII. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the budget, the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Discussion.)
- IX. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- XI. Adjournment.

**Know Your Rights Under the Sunshine Ordinance**

*Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Chris Rustom by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [sotf@sfgov.org](mailto:sotf@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Rustom or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>*

*If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.*

*The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.*

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*This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.*

*Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics)*



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: May 4, 2011

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

Re: Proposed amendments to SIA of San Francisco Public Library

The San Francisco Public Library ("Library") has requested amendments to its Statement of Incompatible Activities ("SIA"). A representative from the Library will attend the Commission's May 9, 2011 meeting to answer any questions. For the reasons set forth below, and because staff believes that provisions in SIAs should be modified when experience shows that they are unduly restricting employees from engaging in activities that are not actually incompatible, staff recommends that the Commission approve of the changes.

### Background

The SIA is a statement that identifies outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers and employees of a City department, board, commission or agency. See San Francisco Campaign and Governmental Conduct Code ("C&GC Code") § 3.218. The voters adopted section 3.218 as part of Proposition E in November 2003. That measure required all City departments to submit draft SIAs to the Ethics Commission for consideration by August 2004. Based on feedback from the Civil Service Commission, which held hearings on the SIAs from 2004 - 2006, the Commission adopted a template—which it amended several times—that sets forth standard language to be included in every department, board and commission's SIA. Between February 2006 and September 2008, the Ethics Commission held hearings to approve the SIAs for all the City's departments, boards and commissions. Throughout the process, the Commission's staff and the Department of Human Resources invited every City employee union to attend meet and confer discussions regarding template and department-specific language. The staff held dozens of meetings with unions between October 2006 and March 2008.

In addition to listing outside activities that are incompatible, inconsistent, or in conflict with the department's mission, each SIA also states that no officer or employee may use City resources for non-City purposes; or sell, use or publish, without appropriate authorization, non-public materials prepared on City time or while using City property; or use his or her City title or designation in any communication for private gain or advantage; or receive any gift for doing his or her job.

The Ethics Commission invited departments to add provisions to the SIAs governing only their officers and employees. Department representatives met with Ethics staff in crafting these provisions, and in general, staff deferred to the departments in identifying issues that required special language in the SIAs. All such non-template provisions were subject to meet and confer with the unions prior to final approval of each SIA by the Ethics Commission. The Commission finally approved the last of the SIAs at its meeting on September 8, 2008; and all the SIAs took effect 30 days later, on October 8, 2008.

Under section 3.218, the Ethics Commission may amend any department's SIA. The Commission must hold a hearing to consider each amendment. No later than seven days prior to the hearing, the Commission must provide notice to the department that submitted the amendment, the unions that represent officers and employees affected by the amendment, and the Civil Service Commission, all of whom will have an opportunity to make a presentation regarding the proposed amendment. See EC Reg. 3.218-1(c).

No amendment is operative until the City has met its meet and confer obligations under state law. See G&GC Code § 3.218(b).

Based on the process set for the adoption of amendments, the Commission will consider the draft amendments at the May 9, 2011 meeting. All the unions that represent employees at the Library and the Civil Service Commission have been notified of the meeting. If the Commission preliminarily approves the changes, the City through the staff of the Ethics Commission, the City Attorney's Office and the Department of Human Resources will engage in meet and confer with the affected unions. Finally, the amendments – either as preliminarily approved by the Commission or as further modified based on the meet and confer discussions – will return for further consideration and possible final approval before the Commission at a subsequent meeting.

#### **Non-template language in the Library's SIA and the Library's reasons for change**

Aside from its mission statement, the non-template language in the Library's SIA appears in section III.A.1, which sets forth five restrictions on activities of Library officers and employees.<sup>1</sup> The provisions are stated below in bold italic text. Following each provision, the Library has provided an explanation of why the language should be deleted, in italic text.

- a. ***No officer or employee may be employed by, or receive compensation from, an individual or entity that has a contract or is a vendor with the Department or Commission, or that has had a contract or was a vendor with the Department or Commission during the past twelve months. This prohibition does not apply to employment of or compensation received by an officer's or employee's spouse or registered domestic partner.***

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<sup>1</sup> Under the SIA, an officer or employee may engage in an activity proscribed in section III.A.1(a)-(e) if the officer or employee obtains an advanced written determination (AWD) that concludes that such activity is actually not incompatible, inconsistent or in conflict with the officer's or employee's duties.

***Example. No officer or employee may be employed by or receive compensation from any individual or entity that provides book binding or book repair services to the Library.***

*Library's explanation to show why change is necessary:*

Many Library staff are also experts in their field (or in a field of personal interest) and quite a few are published authors. For example, one librarian in the arts reference section has a personal passion for dance and has published two monographs on the subject. The current SLA language suggests that the staff member not be allowed to have her works published through a publisher that sells books to the Library, nor to a book vendor that sells books to the Library. This was not the intent of the SLA and unreasonably conflicts with the Library's mission to collect broadly on all topics. It is not detrimental to the Library to have staff with this expertise on a topic; it is beneficial. The current language was intended to prevent potential abuse – a staff member using his or her position to solicit a publishing contract, completing the work during City paid hours, or influencing the purchase of items because he or she is in fact the author. However, other language in the SLA and State conflict of interest laws would prohibit these inappropriate activities and the Library's collection purchasing is directed by following a detailed Collection Development Policy and Collection Plan.

- b. No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, writer, editor or publicist for, a publisher who sells books to the Library.***

*Library's explanation to show why change is necessary:*

Same explanation as above. The Library's largest expenditures outside of staffing are for collections, purchased from publishers and book vendors. In addition to Library staff as authors, we are often asked to act as editors, chapter writers and contributors to compiled works, particularly in the area of library services and the study of library/information science. If the work is done on personal time, there is no reason staff should not be compensated for this work. Further, the Library and community benefit from then being able to add the item to the collection for public access. Inappropriate activities would be prevented by existing conflict of interest laws and the other provisions in the SLA.

- c. No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, programmer, editor, or publicist for a publisher of databases or other electronic media if that publisher sells such materials to the Library.***

*Library's explanation to show why change is necessary:*

This has simply not been a problem for the Library in the past, and we have no reason to believe it will become a problem. If any staff member seeks to obtain outside work for a publisher, the City's work rules would apply. And existing conflict of interest rules other



than the SLA would prohibit that staff member from trying to influence any Library decisions regarding that publisher. The Library's internal policies address how we engage in collections activities. Thus, this provision is not necessary.

- d. ***No employee or the City Librarian may serve, whether compensated or not, as a consultant, exhibition designer, or preparator for a company, nonprofit organization, artist, or artists' collective whose exhibitions are booked into the Library.***

*Library's explanation to show why change is necessary:*

*This provision prohibits activities that the department believes is beneficial to the Library and its staff. Library exhibits staff have been engaged with the non-profit group Exhibit Envoy (formerly the California Exhibition Resource Alliance or CERA), which originally started through the California Council for the Humanities. Exhibit Envoy is associated with numerous high quality state and national exhibits that focus on the history of the state's cultural heritage, often partnering with the Smithsonian, California Historical Society and others. Exhibits organized by Exhibit Envoy are often appropriate for the Library, per the exhibits policy, augmenting and increasing the awareness of and accessibility to the Library's collections. The provision prohibits staff from working with both institutions, though their missions are complementary.*

- e. ***No employee or the City Librarian may be employed by, or provide services in exchange for compensation as an instructor for any person or entity that provides training at the Library.***

*Library's explanation to show why change is necessary:*

*Again, the Library and its staff benefit from staff doing the type of work that this provision prohibits. Instruction for Bay Area library professionals is organized by a regional company, InfoPeople, that specializes in workforce development for staff of all types of libraries, including SFPL employees. The SLA prohibits librarians from SFPL from participating with this group as instructors or curriculum developers, even on their own time and even though the activity does not interfere with the Library or City. On the contrary, staff participation in instruction of this sort would support the Library's connection to other libraries, enhance awareness of and use of SFPL collections, and improve service to the public regionally.*

## **Discussion**

In 2004, the Library's staff proposed the provisions in section III.A.1(a)-(e) to address a concern that officers or employees who engaged in the above activities might exert undue influence on the government decisions regarding the Library's purchases, exhibits, and programs.

However, as set forth in the memorandum from City Librarian Luis Herrera and the above examples from the Library, experience with the provisions suggests that they are unnecessary and burdensome for Library staff. Mr. Herrera states that the Library staff's participation in the above activities does not interfere with the Library's ability to make governmental decisions and conduct outreach according to adopted policies and procedures, adding that "such activities serve to enhance the expertise of librarians and the role of the Library as a community resource and



information provider.” The memo further states that the provisions may serve to hinder the professional development and personal growth of Library staff. The Library also makes the case that potential abuse and undue influence can be effectively addressed through existing conflict of interest laws and the other provisions in the SIA, particularly the sections prohibiting outside activities that require a time commitment that interferes with City duties, the use of City resources for non-City purposes, and the use of City title or designation for private purpose or gain.

### **Staff Recommendation**

For the above reasons, following the Library's request, staff recommends deletion of the provisions in section III.A.1(a)-(e) from the Library's SIA.

In addition, staff recommends adding key Library policies in section I of the SIA, which identifies the laws and rules that govern the conduct of officers and employees of the Library. Staff understands that the Library has worked with union representatives in recommending these changes, and that at least one union plans to send a representative to the May 9 meeting to speak in favor of the changes.

When the Commission adopted the SIAs, it did not intend to set them in stone. The Commission should amend the SIAs when the experience of the departments and employees show that the provisions are not serving their intended goals or are unnecessarily restricting City employees from engaging in activities that are not actually incompatible. For the reasons cited by the Library, staff recommends that the Commission approve the proposed amendments to the SIA of the Library.





*San Francisco Public Library*

Date: February 23, 2011

To: San Francisco Ethics Commission c/o Mabel Ng, Deputy Executive Director

From: Luis Herrera, City Librarian

Cc: Jon Givner, Deputy City Attorney

Re: **Library Department Proposed Amendment of the Statement of Incompatible Activities**

Pursuant to the San Francisco Campaign and Governmental Conduct Code section 3.218, the San Francisco Public Library's Statement of Incompatible Activities ("Statement") was adopted in 2008, based upon proposals drafted in 2004 under previous Library administration. As a result of further review and discussion with staff, the Library department management has reconsidered the effective use and impacts of the Statement, particularly the detailed restrictions included in section III "Restrictions on Incompatible Activities" related to authorship, publishing, exhibits, and instruction. While the restrictions in this section seemed reasonable in the original version, we have since identified many examples of activities that would be prohibited by the current language, but that are, in fact, compatible with the mission and values of the Public Library, such as:

- Technical or subject/research knowledge qualifies library staff to be considered experts in a given field. Librarians are often asked to share this expertise, building upon the public library value of sharing information, providing resources, and promoting lifelong learning. To this end, staff may have the opportunity to -
  - Publish in monograph and journal (print and online) formats, related to library services or a specific topic of expertise;
  - Participate in speaking engagements related to libraries or other topics of interest; or
  - Provide instruction to library professionals, community groups, or outside organizations.
- Personal interest in other community arts/literary activities, such as memberships in a local artist or writers' collective, serve to broaden library staff understanding of and participation in the neighborhoods the Library serves.

Library staff participation in the above activities, apart from individual work responsibilities, does not interfere with the Library's ability to retain appropriate services from publishers, associations, instruction vendors, nor does it inhibit efforts to reach out to community organizations, all according to adopted policies and procedures. On the contrary, such activities serve to enhance the expertise of librarians and the role of the Library as a community resource and information provider.

Experience implementing the Statement has proven that potential abuse will be prevented effectively through execution of the Statement as a whole and, specifically, by the following requirements, which would be maintained in a revised Statement:

- "No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties." (page 2; section III, A., 1)
- "Neither the City Librarian nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the City Librarian or employee to be absent from his or her assignments on a regular basis, or otherwise require a time commitment that is demonstrated to interfere with the City Librarian or employee's performance of his or her City duties." (page 3; section III, A., 2)
- "No officer or employee may use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose." (page 6; section IV, A.)
- "No officer or employee may, in exchange for anything of value and without appropriate authorization, sell, publish or otherwise use any non-public materials that were prepared on City time or while using City facilities, property (including and without limitation, intellectual property), equipment and/or materials." (page 6; section IV, B.)
- "No officer or employee may use his or her City title or designation in any communication for any private gain or advantage." (page 7; section IV, C.)
- "No officer or employee may receive or accept gifts from anyone other than the City for the performance of a specific service or act the officer or employee would be expected to render or perform in the regular course of his or her City duties; or for advice about the processes of the City directly related to the officer's or employee's duties and responsibilities, or the processes of the entity they serve." (page 8; section V)

With these restrictions in place, the Library proposes that Section III, A., 1 "Activities that Conflict with Official Duties," be amended to remove examples a. through e., as well as any references to these examples. These examples are unnecessary to achieving successful implementation of the Statement and may serve as a hindrance to the professional development and personal growth of Library staff. In addition, we propose that key Library policies related to the management of Library collections, exhibitions, and patron records be referenced in the list of "Department policies and State and local laws and rules" that govern staff conduct in the Statement's introduction (section I).

A proposed, edited version of the Statement is attached.

SAN FRANCISCO PUBLIC LIBRARY AND COMMISSION

STATEMENT OF INCOMPATIBLE ACTIVITIES

**I. INTRODUCTION**

This Statement of Incompatible Activities is intended to guide officers and employees of the San Francisco Public Library ("Department" or "Library") and Library Commission ("Commission") about the kinds of activities that are incompatible with their public duties and therefore prohibited. For the purposes of this Statement, and except where otherwise provided, "officer" shall mean the City Librarian and a member of the Commission; and "employee" shall mean all employees of the Department.

This Statement is adopted under the provisions of San Francisco Campaign & Governmental Conduct Code ("C&GC Code") section 3.218. Engaging in the activities that are prohibited by this Statement may subject an officer or employee to discipline, up to and including possible termination of employment or removal from office, as well as to monetary fines and penalties. (C&GC Code § 3.242; Charter § 15.105.) Before an officer or employee is subjected to discipline or penalties for violation of this Statement, the officer or employee will have an opportunity to explain why the activity should not be deemed to be incompatible with his or her City duties. (C&GC Code § 3.218.) Nothing in this document shall modify or reduce any due process rights provided pursuant to the officer's or employee's collective bargaining agreement.

In addition to this Statement, officers and employees are subject to Department policies and State and local laws and rules governing the conduct of public officers and employees, including but not limited to:

- Political Reform Act, California Government Code § 87100 *et seq.*;
- California Government Code § 1090;
- San Francisco Charter;
- San Francisco Campaign and Governmental Conduct Code;
- San Francisco Sunshine Ordinance;
- Applicable Civil Service Rules;
- SFPL Collection Policy and Collection Plan;
- SFPL Exhibitions Policy and Exhibitions Guidelines;
- Library Bill of Rights; and the
- SFPL Privacy Policy.

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Nothing in this Statement shall exempt any officer or employee from applicable provisions of law, or limit his or her liability for violations of law. Examples provided in this Statement are for illustration purposes only, and are not intended to limit application of this Statement. Nothing in this Statement shall interfere with the rights of employees under a collective bargaining agreement or Memorandum of Understanding applicable to that employee.

Nothing in this Statement shall be construed to prohibit or discourage any City officer or employee from bringing to the City's and/or public's attention matters of actual or perceived malfeasance or misappropriation in the conduct of City business, or from filing a complaint alleging that a City officer or employee has engaged in improper governmental activity by violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws, regulations or rules; violating the California Penal Code by misusing City resources; creating a specified and substantial danger to public health or safety by failing to perform duties required by the officer's or employee's City position; or abusing his or her City position to advance a private interest.

## San Francisco Public Library and Commission Letterhead

No amendment to any Statement of Incompatible Activities shall become operative until the City and County has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

If an employee has questions about this Statement, the questions should be directed to the employee's supervisor or to the City Librarian. Similarly, questions about other applicable laws governing the conduct of public employees should be directed to the employee's supervisor or the City Librarian, although the supervisor or City Librarian may determine that the question must be addressed to the Ethics Commission or City Attorney. Employees may also contact their unions for advice or information about their rights and responsibilities under these and other laws.

If a City officer has questions about this Statement, the questions should be directed to the officer's appointing authority, the Ethics Commission or the City Attorney.

### II. MISSION OF THE SAN FRANCISCO PUBLIC LIBRARY AND COMMISSION

*The mission of the San Francisco Public Library is to provide free and equal access to information, knowledge, and independent learning and the joys of reading for our diverse community.*

### III. RESTRICTIONS ON INCOMPATIBLE ACTIVITIES

This section prohibits outside activities, including self-employment, that are incompatible with the mission of the Department. Under subsection C, an officer or employee may seek an advance written determination whether a proposed outside activity is incompatible and therefore prohibited by this Statement. Outside activities other than those expressly identified here may be determined to be incompatible and therefore prohibited. For an advance written determination request from an employee, if the City Librarian delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the City Librarian.

#### A. RESTRICTIONS THAT APPLY TO ALL OFFICERS AND EMPLOYEES

##### 1. ACTIVITIES THAT CONFLICT WITH OFFICIAL DUTIES

No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an officer or employee to perform his or her City duties include, but are not limited to, activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section. Reserved.

a.

##### 2. ACTIVITIES WITH EXCESSIVE TIME DEMANDS

Neither the City Librarian nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the City Librarian or employee to be

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~~§-No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, writer, editor or publicist for, a publisher who sells books to the Library. §~~

~~§-No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, programmer, editor, or publicist for a publisher of databases or other electronic media if that publisher sells such materials to the Library. §~~

~~§-No employee or the City Librarian may serve, whether compensated or not, as a consultant, exhibition designer, or preparator for a company, nonprofit organization, artist, or artists' collective whose exhibitions are booked into the Library. §~~

~~No employee or the City Librarian may be employed by, or provide services in exchange for compensation as an instructor for any person or entity that provides training at the Library.~~



absent from his or her assignments on a regular basis, or otherwise require a time commitment that is demonstrated to interfere with the City Librarian or employee's performance of his or her City duties.

*Example.* An employee who works at the Department's front desk answering questions from the public wants to take time off every Tuesday and Thursday from 2:00 to 5:00 to coach soccer. Because the employee's duties require the employee to be at the Department's front desk during regular business hours, and because this outside activity would require the employee to be absent from the office during regular business hours on a regular basis, the City Librarian or his/her designee may, pursuant to subsection C, determine that the employee may not engage in this activity.

### **3. ACTIVITIES THAT ARE SUBJECT TO REVIEW BY THE DEPARTMENT**

Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, no officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department. In addition to any activity permitted pursuant to subsection C, nothing in this subsection prohibits the following activities: appearing before one's own department or commission on behalf of oneself; filing or otherwise pursuing claims against the City on one's own behalf; running for City elective office; or making a public records disclosure request pursuant to the Sunshine Ordinance or Public Records Act. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

Assistance in Responding to City Bids, RFQs and RFPs. No officer or employee may knowingly provide selective assistance (i.e., assistance that is not generally available to all competitors) to individuals or entities in a manner that confers a competitive advantage on a bidder or proposer who is competing for a City contract. Nothing in this Statement prohibits an officer or employee from providing general information about a bid for a City contract, a Department Request for Qualifications or Request for Proposals or corresponding application process that is available to any member of the public. Nothing in this Statement prohibits an officer or employee from speaking to or meeting with individual applicants regarding the individual's application, provided that such assistance is provided on an impartial basis to all applicants who request it.

#### **B. RESTRICTIONS THAT APPLY TO EMPLOYEES IN SPECIFIED POSITIONS**

In addition to the restrictions that apply to all officers and employees of the Department, unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section for individual employees holding specific positions.

[RESERVED.]

#### **C. ADVANCE WRITTEN DETERMINATION**

As set forth below, an employee of the Department or the City Librarian or a member of the Commission may seek an advance written determination whether a proposed outside activity conflicts with the mission of the Department, imposes excessive time demands, is subject to review by the Department, or is otherwise incompatible and therefore prohibited by section III of this Statement. For the purposes of this section, an employee or other person seeking an

advance written determination shall be called "the requestor"; the individual or entity that provides an advance written determination shall be called "the decision-maker."

#### **1. PURPOSE**

This subsection permits an officer or employee to seek an advance written determination regarding his or her obligations under subsections A or B of this section. A written determination by the decision-maker that an activity is not incompatible under subsection A or B provides the requestor immunity from any subsequent enforcement action for a violation of this Statement if the material facts are as presented in the requestor's written submission. A written determination cannot exempt the requestor from any applicable law.

If an individual has not requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement.

Similarly, if an individual has requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement if:

- (a) the requestor is an *employee* who has not received a determination under subsection C from the decision-maker, and 20 working days have not yet elapsed since the request was made; or
- (b) the requestor is an *officer* who has not received a determination under subsection C from the decision-maker; or
- (c) the requestor has received a determination under subsection C that an activity is incompatible.

In addition to the advance written determination process set forth below, the San Francisco Charter also permits any person to seek a written opinion from the Ethics Commission with respect to that person's duties under provisions of the Charter or any City ordinance relating to conflicts of interest and governmental ethics. Any person who acts in good faith on an opinion issued by the Commission and concurred in by the City Attorney and District Attorney is immune from criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. Nothing in this subsection precludes a person from requesting a written opinion from the Ethics Commission regarding that person's duties under this Statement.

#### **2. THE DECISION-MAKER**

Decision-maker for request by an employee: An employee of the Department may seek an advance written determination from the City Librarian or his or her designee. The City Librarian or his or her designee will be deemed the decision-maker for the employee's request.

Decision-maker for request by the City Librarian: The City Librarian may seek an advance written determination from his or her appointing authority. The appointing authority will be deemed the decision-maker for the City Librarian's request.

Decision-maker for request by a member of the Commission: A member of the Commission may seek an advance written determination from his or her appointing authority or from his or her commission, or the Ethics Commission. The appointing authority, Commission or Ethics Commission will be deemed the decision-maker for the member's request.

### **3. THE PROCESS**

The requestor must provide, in writing, a description of the proposed activity and an explanation of why the activity is not incompatible under this Statement. The written material must describe the proposed activity in sufficient detail for the decision-maker to make a fully informed determination whether it is incompatible under this Statement.

When making a determination under this subsection, the decision-maker may consider any relevant factors including, but not limited to, the impact on the requestor's ability to perform his or her job, the impact upon the Department as a whole, compliance with applicable laws and rules and the spirit and intent of this Statement. The decision-maker shall consider all relevant written materials submitted by the requestor. The decision-maker shall also consider whether the written material provided by the requestor is sufficiently specific and detailed to enable the decision-maker to make a fully informed determination. The decision-maker may request additional information from the requestor if the decision-maker deems such information necessary. For an advance written determination request from an employee, if the City Librarian delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the City Librarian.

The decision-maker shall respond to the request by providing a written determination to the requestor by mail, email, personal delivery, or other reliable means. For a request by an employee, the decision-maker shall provide the determination within a reasonable period of time depending on the circumstances and the complexity of the request, but not later than 20 working days from the date of the request. If the decision-maker does not provide a written determination to the employee within 20 working days from the date of the employee's request, the proposed activity will be determined not to violate this Statement.

The decision-maker may revoke the determination at any time based on changed facts or circumstances or other good cause, by providing advance written notice to the requestor. The written notice shall specify the changed facts or circumstances or other good cause that warrants revocation of the advance written determination.

### **4. DETERMINATIONS ARE PUBLIC RECORDS**

To assure that these rules are enforced equally, requests for advance written determinations and written determinations, including approvals and denials, are public records to the extent permitted by law.

## **IV. RESTRICTIONS ON USE OF CITY RESOURCES, CITY WORK-PRODUCT AND PRESTIGE**

### **A. USE OF CITY RESOURCES**

No officer or employee may use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. No officer or employee may allow any other person to use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose.

Notwithstanding these general prohibitions, any incidental and minimal use of City resources does not constitute a violation of this section. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use City facilities, equipment or resources, as defined herein.

*Example.* An officer or employee may use the telephone to make occasional calls to arrange medical appointments or speak with a child care provider, because this is an incidental and minimal use of City resources for a personal purpose.

Nothing in this Statement shall exempt any officer or employee from complying with more restrictive policies of the Department regarding use of City resources, including, without limitation, the Department's e-mail policy.

#### B. USE OF CITY WORK-PRODUCT

No officer or employee may, in exchange for anything of value and without appropriate authorization, sell, publish or otherwise use any non-public materials that were prepared on City time or while using City facilities, property (including without limitation, intellectual property), equipment and/or materials. For the purpose of this prohibition, appropriate authorization includes authorization granted by law, including the Sunshine Ordinance, California Public Records Act, the Ralph M. Brown Act as well as whistleblower and improper government activities provisions, or by a supervisor of the officer or employee, including but not limited to the officer's or employee's appointing authority. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use public materials for collective bargaining agreement negotiations.

#### C. USE OF PRESTIGE OF THE OFFICE

No officer or employee may use his or her City title or designation in any communication for any private gain or advantage. The following activities are expressly prohibited by this section.

##### 1. USING CITY BUSINESS CARDS

No officer or employee may use his or her City business cards for any purpose that may lead the recipient of the card to think that the officer or employee is acting in an official capacity when the officer or employee is not.

*Example of inappropriate use.* An employee's friend is having a dispute with his new neighbor who is constructing a fence that the friend believes encroaches on his property. The friend invites the employee over to view the disputed fence. When the neighbor introduces herself, the employee should not hand the neighbor her business card while suggesting that she could help resolve the dispute. Use of a City business card under these circumstances might lead a member of the public to believe that the employee was acting in an official capacity.

*Example of acceptable use.* An employee is at a party and runs into an old friend who has just moved to town. The friend suggests meeting for dinner and asks how to get in touch with the employee to set up a meeting time. The

## *San Francisco Public Library and Commission Letterhead*

employee hands the friend the employee's business card and says that he can be reached at the number on the card. Use of a City business card under these circumstances would not lead a member of the public to believe that the employee was acting in an official capacity. Nor would use of the telephone to set up a meeting time constitute a misuse of resources under subsection A, above.

### **2. USING CITY LETTERHEAD, CITY TITLE, OR E-MAIL**

No officer or employee may use City letterhead, City title, City e-mail, or any other City resource, for any communication that may lead the recipient of the communication to think that the officer or employee is acting in an official capacity when the officer or employee is not. (Use of e-mail or letterhead in violation of this section could also violate subsection A of this section, which prohibits use of these resources for any non-City purpose.)

*Example.* An officer or employee is contesting a parking ticket. The officer or employee should not send a letter on City letterhead to the office that issued the ticket contesting the legal basis for the ticket.

### **3. HOLDING ONESELF OUT, WITHOUT AUTHORIZATION, AS A REPRESENTATIVE OF THE DEPARTMENT**

No officer or employee may hold himself or herself out as a representative of the Department, or as an agent acting on behalf of the Department, unless authorized to do so.

*Example.* An employee who lives in San Francisco wants to attend a public meeting of a Commission that is considering a land use matter that will affect the employee's neighborhood. The employee may attend the meeting and speak during public comment, but should make clear that he is speaking in his private capacity and not as a representative of the Department.

## **V. PROHIBITION ON GIFTS FOR ASSISTANCE WITH CITY SERVICES**

State and local law place monetary limits on the value of gifts an officer or employee may accept in a calendar year. (Political Reform Act, Gov't Code § 89503, C&GC Code §§ 3.1-101 and 3.216.) This section imposes additional limits by prohibiting an officer or employee from accepting any gift that is given in exchange for doing the officer's or employee's City job.

No officer or employee may receive or accept gifts from anyone other than the City for the performance of a specific service or act the officer or employee would be expected to render or perform in the regular course of his or her City duties; or for advice about the processes of the City directly related to the officer's or employee's duties and responsibilities, or the processes of the entity they serve.

*Example.* A member of the public who regularly works with and receives assistance from the Department owns season tickets to the Giants and sends a pair of tickets to an employee of the Department in appreciation for the employee's work. Because the gift is given for the performance of a service the employee is expected to perform in the regular course of City duties, the employee is not permitted to accept the tickets.

*Example.* A member of the public requests assistance in resolving an issue or complaint that is related to the City and County of San Francisco, but that does

not directly involve the Department. The employee directs the member of the public to the appropriate department and officer to resolve the matter. The member of the public offers the employee a gift in appreciation for this assistance. The employee may not accept the gift, or anything of value from anyone other than the City, for providing this kind of assistance with City services.

As used in this Statement, the term gift has the same meaning as under the Political Reform Act, including the Act's exceptions to the gift limit. (See Gov't Code §§ 82028, 89503; 2 Cal. Code Regs. §§ 18940-18950.4.) For example, under the Act, a gift that, within 30 days of receipt, is returned, or donated by the officer or employee to a 501(c)(3) organization or federal, state or local government without the officer or employee taking a tax deduction for the donation, will not be deemed to have been accepted. In addition to the exceptions contained in the Act, nothing in this Statement shall preclude an employee's receipt of a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional service by that employee, and which is not provided in return for the rendering of service in a particular matter. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law.

In addition, the following gifts are de minimis and therefore exempt from the restrictions on gifts imposed by section V of this Statement:

- i. Gifts, other than cash, with an aggregate value of \$25 or less per occasion; and
- ii. Gifts such as food and drink, without regard to value, to be shared in the office among officers or employees.

*Example.* A member of the public who regularly works with and receives assistance from the Department sends a \$15 basket of fruit to an employee as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the employee is expected to perform in the regular course of City duties, the employee may accept the fruit because the value is de minimis. (Because the reporting requirement is cumulative, an employee may be required to report even de minimis gifts on his or her Statement of Economic Interests if, over the course of a year, the gifts equal or exceed \$50.)

*Example.* A member of the public who regularly works with and receives assistance from the Department sends a \$150 basket of fruit to the Department as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the Department is expected to perform in the regular course of City duties, the Department may accept the fruit basket because it is a gift to the office to be shared among officers and employees.

## VI. AMENDMENT OF STATEMENT

Once a Statement of Incompatible Activities is approved by the Ethics Commission, the Department may, subject to the approval of the Ethics Commission, amend the Statement. (C&GC Code § 3.218(b).) In addition, the Ethics Commission may at any time amend the Statement on its own initiative. No Statement of Incompatible Activities or any amendment thereto shall become operative until the City and County of San Francisco has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

<sup>5</sup> Conflicts of Interest/Incompatibility Statements/Public Library/SIA 02.12.08 doc





# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

## Memorandum

**To:** Members, Ethics Commission

**From:** John St. Croix, Executive Director

**Re:** Policy Priorities

**Date:** May 4, 2011

---

Following are the policy priorities adopted by the Commission for last year.

1. Education and Communication with the General Public
2. Enforcement
3. Campaign Finance
4. Conflicts of Interest
5. Campaign Consultant Ordinance

While these areas are always in the Commission's focus, the current fiscal year presents three additional challenges that may affect the Commission's decisions on priorities. First, after a great deal of staff work and Commission consideration, a complete review of the Campaign Consultant Ordinance has been completed and the measure is pending before the Board of Supervisors and will appear on the ballot in November. Second, candidates are already very active for the 2011 Mayoral race, and staff is very busy administering the Mayoral Public Finance program. Due to non-participation in the last cycle, this is the first time staff is executing the Public Financing mode on such a large scale. Finally, there is one staff vacancy and one staff member on extended disability, and two long-term staffers are expected to leave in the foreseeable future.

With these observations in mind, my recommendations for Commission priorities this year are:

1. Mayoral Public Financing Program – staff has to be ready for an intensified season of what is already a very busy program that is highly technical and difficult to administer. Additional complications may well result pending the Supreme Court's McComish decision. This will perhaps entail swift and complicated changes to how the program is administered in mid-election.
2. Campaign Consultant Ordinance – once the Commission's proposal for the ballot is ratified, the Commission may no longer express any public opinion for

- or against the ballot measure; the measure must speak for itself. If it passes, the Commission will then need to adopt regulations to govern the program and staff will have to implement the new procedures, including the development of software to integrate the new program into our current Online Filing System. Should the measure fail, the Commission may opt to “return to the drawing board.”
3. Staff building – in prior discussions, the Commission has acknowledged that unexpectedly high staff turnover made it necessary to allow time for staff-building. The long-term stability and capability of the staff requires that newer employees develop a deft understanding of the laws we oversee and a stable performance record that the Commission – and the public – can count on. It also requires that long-term staff feel supported and energized in their duties and that all staff reflect high morale and satisfaction in order to achieve maximum productivity.
  4. Education and Outreach – the Commission has frequently restated its commitment to this area and conducted several discussions about it last year, essentially reaching the conclusion that work in this area is satisfactory but that it is an eternal priority.

The Commission never stops reviewing campaign finance laws and regulations, consistently performs research and outreach on conflict-of-interest issues, and is always mindful of the need for quality enforcement. It is a policy decision for the Commission to decide if any of these should be on the priority list for the coming year.



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

## EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of May 9, 2011

BENEDICT Y. HUR  
CHAIRPERSON

JAMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

### 1. Budget.

As mentioned previously, the Mayor is expected to propose his budget to the Board of Supervisors on June 1. The Commission has requested an operating budget of \$2,250,000 and \$2,000,000 for the Election Campaign Fund for FY 11-12. The Board is scheduled consider the Commission's budget on June 20 and 27. I will continue to work closely with both the Mayor and the Board regarding the Commission's budget.

### 2. November 8, 2011 Election.

Four candidates for Mayor have submitted an application for public funds. The Commission has disbursed a total of \$1,173,523 to three of these four candidates; the fourth candidate's application is currently under review.

Candidates for Mayor who are interested in seeking public funding may submit an application for public funds beginning February 8. In order to receive public funds, an interested candidate must demonstrate, among other things, that he/she has received at least \$25,000 in qualifying contributions from at least 250 individuals who reside in the City.

### 3. Investigation and enforcement program.

Since its last regular meeting on April 11, 2011, the Ethics Commission has received no new complaints. There are 24 pending complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	8
Conflict of Interest	5
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	9
TOTAL	24

#### 4. Campaign finance disclosure program.

a. Filing deadline. The next filing deadline that applies to all committees falls on August 1, 2011 for the First Semi-Annual statement, which covers the reporting period ending June 30, 2011. In the interim, staff continues to receive and process campaign statements for other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations.

b. Collection of late filing fees and contribution forfeitures. In the FY 10-11, as of April 30, the Commission collected a total of \$38,547 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$131,416, of which waiver requests are pending for \$93,080; and \$21,569 is pending at the Bureau of Delinquent Revenues.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on pending accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnnie Carter for Community College Board	1226264	Johnnie Carter	6/16/06	\$9,520	\$6,595	\$6,595
2	Committee to Elect M. Valle for Treasurer	1278937	Manuel B. Valle	6/14/07	\$5,525	\$5,525	\$5,525
3	Bill Barnes for District 5	1265969	Alix Rosenthal	1/3/08	\$3,120	\$113	\$113
4	Care Not Cash	1244505	Ronald Jin	2/29/08	\$5,331	\$1856	\$1,556
5	Omar Khalif for Board of Educ.	1287030	Omar Khalif	7/30/09	\$1,800	\$1,775	\$1,775
6	Myrna Lim for District 11 Sup	1306882	Myrna Lim	7/30/09	\$1,180	\$1,180	\$1,180
7	Myrna Lim for District 11 Sup	1256697	Jia Jun Chen	8/20/07	\$3,855	\$2,775	\$2,775
8	San Francisco Women's Political Committee	1243711	Giselle Barry	5/16/06	\$1,906	\$50	\$50
9	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$2,000	\$2,000	\$2,000
						TOTAL	\$21,569

#### 5. Revenues report.

For FY 10-11, the Commission is budgeted to generate \$78,000 in revenues. As of May 4, 2011, the Commission received and deposited \$98,763 as summarized below. The figure represents collection of approximately 126 percent of expected revenues for FY 10-11. Revenues received and deposited as of May 4, 2011:

Source	Budgeted Amount FY 10-11	Receipts
Lobbyist Fees	\$8,000	\$41,050
Other Ethics General	\$1,000	\$307
Campaign Finance Fines	\$50,000	\$36,110
Campaign Consultant Fees	\$15,000	\$15,750
Lobbyist Fines	\$1,000	\$2,050
Statements of Economic Interests Fines	\$1,000	\$70
Other Ethics Fines	\$1,000	\$1,076
Campaign Consultant Fines	\$1,000	\$2,350
Total	\$78,000	\$98,763

**6. Draft regulations related to complaints regarding Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force.**

The Sunshine Ordinance Task Force (SOTF) has informed the Commission that its review of draft regulations related to the handling of complaints regarding alleged violations of the Sunshine Ordinance and referrals from the SOTF continues. The SOTF anticipates that it will complete its work sometime this spring.

**7. Lobbyist program.**

As of May 1, 2011, 73 individual lobbyists were registered with the Commission. In FY 10-11, total revenues collected to date amount to \$41,050, which consist of \$39,000 in lobbyist registration fees and \$2,050 in late fines. The April 2011 reporting period deadline is May 16, 2011.

**8. Campaign Consultant program.**

As of May 2, 2011, 28 campaign consultants are active and registered with the Commission. \$15,750 in registration fees and \$2,350 in late fines have been collected during the 2010-2011 fiscal year. The next campaign consultant quarterly report deadline is Wednesday, June 15, 2011. Staff will mail and e-mail reminder notices to all active campaign consultants two weeks before the deadline.

**9. Statement of Economic Interests program.**

Between March 19 and May 2, staff entered 210 SEI-related filings into SFEDS. Staff continues to work on processing the filings.

**10. Outreach and Education.**

On April 12, staff conducted a Candidates' Training which covered filing requirements for potential candidates for the City elective offices of Mayor, District Attorney, and Sheriff. This training focused on campaign finance requirements that apply to candidates for all City elective offices and provided an overview of the Mayoral public financing program.

On April 14, staff met with three members of the Parliament of Poland, who were in the United States as part of the State Department's International Visitor Leadership Program. The group explored political campaigning, ethics and local government in general.

On April 21, staff convened a second interested persons meeting regarding possible changes to the Campaign Finance Reform Ordinance. Staff expects to present proposed amendments to the Commission for its consideration in the near future.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments.

The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training (*new*)
- Controller's Office SIA Training (*new*)
- Department on the Environment SIA Training (*revised*)
- Governmental Ethics Ordinance Training for City Employees
- Lobbyist Ordinance Training (*new*)
- Medical Examiner's Office SIA Training (*revised*)
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training (*revised*)
- SIA Template Language Training (*new*)

The following are the currently scheduled live trainings for 2011:

- Candidates' Training: June 23, and August 9
- SIA Training for the Fire Department: May 11
- SIA Training for the Planning Department: May 17 and June 14

Respectfully submitted,

  
\_\_\_\_\_  
John St. Croix  
Executive Director

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Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
May 9, 2011

Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

GOVERNMENT  
DOCUMENTS DEPT

JUN - 9 2011

**I. Call to order and roll call.**

SAN FRANCISCO  
PUBLIC LIBRARY

Chairperson Hur called the meeting to order at 5:37 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamieenne Studley, Vice-Chairperson; Dorothy S. Liu, Commissioner; Charles Ward, Commissioner. Commissioner Hayon was absent.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: Jill Bourne, Dr. Judy Melinek, David Pilpel, Richard Hansen, and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Proposed amendments to the Statement of Incompatible Activities (SLA) for the San Francisco Public Library, dated May 4, 2011.
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission on April 11, 2011.
- Memorandum re: policy priorities from the Executive Director, dated May 4, 2011.
- Executive Director's Report to the Ethics Commission for the Meeting of May 9, 2011.

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

Dr. Judy Melinek, from the Office of the Medical Examiner, stated that she had appeared at April 11, 2011 meeting. She stated that, at that meeting, she had alerted the Commission of her office's practice of ignoring subpoenas. She stated that there have been informal meetings with Dr. Hart and acting City Administrator Brown, but that there have been no instructions to change the SLA. She stated that Dr. Hart stated she would not change the SLA without written instruction. Dr. Melinek stated that Dr. Hart denied her request for AWD to testify in a case in Napa County. She stated that the Medical Examiner's policy was a First Amendment infringement. She stated that she had reasons to believe that she was being singled out because of her request from last month. She stated that other professionals, such as investigators, toxicologists, and medical examiners, also feel the same way. She also provided written testimony from another employee at the Office of the Medical Examiner.

A member of the public stated that he has been doing some thinking about what ethics means. He stated that the rules apply to people you know and people you don't know. He stated that people had an investment in society, regardless of class or economic status. He stated that no one can afford not to care about how other people are treated. He stated that he made these comments in the hope that the Jewelle Gomez complaint would be heard soon. He stated that the rules must apply across the board. He stated if we give status to friends, those friends have bought that friendship.

Richard Hansen stated that he was speaking as a private citizen and that was not paid to be at the meeting. He stated that he had read things about the Snow Lake fiasco. He stated that, in recent months, there has been some discussion about how contractors have been selected at Treasure Island. He stated that he was concerned that individuals were being paid \$500 for testifying at a public hearing. He suggested that City lobbyists should carry identification and gave an example of a medallion each lobbyist could wear. He also suggested that the lobbyist carry an envelope that stated how much s/he was being paid.

Paul Currier, a candidate for Mayor in 2011, stated that he was opposed to the adoption of the draft minutes of the April 2011 meeting. He reminded the Commissioners that they have a fiduciary duty to the voters of San Francisco. He disagreed with the Commission's decision permitting the current Mayor to return to his previous job.

Chairperson Hur stated that the Commission cannot address items not on the agenda.

### **III. Proposed Amendments to the Statement of Incompatible Activities (SIA) for the San Francisco Public Library.**

Deputy Director Ng addressed the Commission. She stated that several provisions that had been adopted were not working and suggested that the Commission consider making changes in the Library's SIA. She stated that the Deputy City Librarian was available to answer questions.

Commissioner Liu asked whether there had been requests for advanced written determinations in the department. Deputy City Librarian Jill Bourne stated that there has been one request. Ms. Bourne stated that the fact that the advanced written determination process has not been utilized was a concern for the Library. She stated that some decisions had been made, for example, cancelling exhibits, because of the SIA, so there has been a public service impact. She stated that there is now an increased awareness in the Library. She also stated that the request for advanced written determination had been approved.

Commissioner Studley stated that she anticipated that local and state conflict of interest laws would take care of most concerns. Ms. Bourne stated that the Library has a detailed collection plan. She stated that there are other documents that will be added to the SIA that would dictate how the Library spends its resources.

The Commissioners discussed hypothetical situations where Library resources could be misused, including where someone in charge of purchasing books from a particular publisher or choosing an exhibit for the Library may have a conflict with the proposed vendor(s). Ms. Ng stated that

all officers and employees are also subject to the Political Reform Act and would therefore be prohibited from engaging in a governmental decision in which s/he had a financial interest.

Commissioner Ward stated his opposition of eliminating the SIA provisions for the Library. He presented a situation where someone may be responsible for making decisions regarding a particular vendor, where s/he may be moonlighting for that vendor.

Ms. Ng stated that the general conflict of interest rules govern financial activities of City officers and employees. She stated that the SIAs go beyond those general rules and deal with the use of City resources. She presented an example of what is included in an SIA that is not included in the local conflict of interest laws: no one can be paid by a third party for performing his/her City job.

Commissioner Ward expressed concern that someone (ex. City purchasing agent) would have a financial interest due to being a consultant for a vendor. Ms. Ng stated that there are narrow exceptions, but that person would have a conflict of interest. She stated that if someone receives a gift of \$420 or more or \$500 in income from a source or an investment of \$2,000 or more in a source, that person is prohibited from engaging in a governmental decision regarding that source. Commissioner Liu asked whether that person would be required to disclose that financial interest. Ms. Ng stated that that person would be required to disclose it in either meeting minutes or in the file.

Chairperson Hur asked what in the SIA did not meet the original expectations of the Library. Ms. Bourne stated that the Library administration was completely different in 2004, when it was discussed. She stated that there was not a lot of staff input at that time and that the SIA now prohibits reasonable activities. She gave an example of a staff member who is an artist in the community. She stated that this staff member is part of a residence that requires participation in art exhibits, which is banned by the SIA.

#### Public Comment:

A member of the public offered to lend others his stopwatch. He stated that the Library Commission approved an SIA on July 15, 2004 and that it has not been withdrawn. He stated that people may be interested in weighing in on what kind of SIA the Library should have. He stated that the Ethics Commission should ask for the Library Commission's comments. He stated that the Library was the quintessential example of incompatible activities. He stated that they conduct fundraising.

Andrea Grimes, who works in special collections at the Library, is an officer in the Librarians' Guild. She stated that the original SIA was approved, but that Library staff did not have adequate or appropriate input until now. She stated that the document presented to the Ethics Commission has been worked on in coordination with Library staff, the Library Commission, and the union. She stated that she is representing the union and that there has been a long bond of trust with the public. She stated that there was a code of ethics, which was promulgated by the Professional Library Association. She also stated that she approved these changes.

David Pilpel stated that he is speaking in support of the SIA changes. He stated that he did not object to adding the ALA code of ethics and stated that the referenced policies are on the Library's website. He stated that there was an interest in including specific items for each department, but that it may not be necessary if the items are covered elsewhere.

Chairperson Hur asked what indication Mr. Pilpel had that it is no longer needed. Mr. Pilpel stated that the Library had some legitimate concerns, such as the artist's living situation or someone who has written a book. He stated that, in those cases, there is not a concern of undue influence or that the activity should be deemed incompatible. He also stated that he was not being paid to make these statements.

Commissioner Studley asked what the Library Commission's role was in the changes. Ms. Ng stated that the approval of the various commissions was not necessary, but that there were many changes and meetings from 2004 to 2008, when the SIAs were adopted. She stated that what was approved in 2004 is not the same version that exists today. She stated that if the commission decides to approve the changes, then the draft version could be provided to the Library Commission.

Chairperson Hur asked whether any of the instances involved officers of the Library. Ms. Bourne stated that none of the Commissioners or the City Librarian was involved in any of these instances. Chairperson Hur asked whether the Library would object if the SIA were restricted to officers only. Ms. Bourne stated that she would want to review that idea, but the intent of the revisions was for the employees.

Chairperson Hur stated that the perception issue is a concern. Commissioner Ward stated that he would only support changes if SIA provisions remained in place for the Library officers. Mr. St. Croix suggested changing the language for employees and leaving the SIA provisions for Commissioners and the City Librarian. Commissioner Liu asked whether the advanced written determination process would still exist, and, if so, who would sign it for the City Librarian. Ms. Bourne stated that the Mayor would approve that request. Mr. St. Croix stated that he anticipates this matter being revisited at the June meeting.

#### **IV. Closed session.**

Executive Director St. Croix stated there had been a drafting error in the agenda and, in the abundance of caution, this item has been cancelled.

#### Public Comment:

None.

#### **V. Discussion and vote regarding closed session action and deliberations.**

#### Public Comment:

None.

#### **VI. Minutes of the Commission's regular meeting of April 11, 2011.**

Commissioner Studley made a correction on page 4 regarding the name of a speaker, Mr. Zapala.

**Motion 11-05-09-01 (Ward/Studley): Moved, seconded, and passed (4-0; Hayon absent) that the Commission adopt the minutes of the Commission's regular meeting of April 11, 2011, as amended.**

Public Comment:

None.

**VII. Policy Priorities.**

Executive Director St. Croix stated that the Commission staff has ongoing priorities regarding the day-to-day business of the office, but that the Commission sets policy for staff to carry out. He stated that several areas are always a priority, but other areas change. He stated that he has proposed an updated version.

Commissioner Studley stated that she agreed with the list, especially the first priority, as there is a challenge with this year's race. Chairperson Hur agreed. Mr. St. Croix stated that the office could become very busy based on Supreme Court decisions. Commissioner Liu asked whether there are any proposal before a court decision is made. Mr. St. Croix stated that he would propose ideas depending on what the outcome is. He stated that the source of legal advice on this topic would be from the Oakland City Attorney's office.

Chairperson Hur asked about staff building. Mr. St. Croix stated that the budget news would be finalized on June 1, 2011. He stated that the office could fill a vacancy, if there is no bad news. He stated there was expected turnover in the office, but that Human Resources does not allow departments to search for a new position in advance of a vacancy. He stated that there is typically a three-month gap between when someone leaves and when the position is filled. He stated that he expected two vacancies in the coming year. He stated that getting feedback from the Commission is helpful for staff. He stated that he and Ms. Ng do what they can to keep staff morale strong, but that turnover is hard on people. Chairperson Hur asked whether there was a staff retreat. Mr. St. Croix stated that staff used to go to an annual ethics convention, but that the budget has not permitted that in years.

**Motion 11-05-09-02 (Studley/Ward): Moved, seconded, and passed (4-0; Hayon absent) that the Commission adopt these priorities for the coming years.**

Public Comment:

David Pilpel stated that he was supportive of these priorities.

**VIII. Executive Director's Report.**

Executive Director St. Croix stated that he had already mentioned the expectations for the budget.

He apologized for brevity for the meeting. He stated that staff anticipated the continuation of a hearing and that he expects a longer meeting in June.

**IX. Items for future meetings.**

Public Comment:

David Pilpel stated that he had suggestions for two provisions in the conflicts of interest laws. He stated that the first provision was regarding when a public disclosure is required in the context of a public meeting. He stated that the disclosure does not currently need to be repeated at later meetings, nor are the reasons for recusal or disclosure repeated, but he thought that it would be helpful for these reasons to be repeated and disclosed at every meeting. He stated that the second provision was regarding a prohibition on making contracts when you are a City officer. He stated that one exemption is sitting on a non-profit board of directors. He stated that if someone is a City officer and on a non-profit board that contracts with the City, there could be an issue and that person should be making a decision not to contract. He requested that staff look at these two items.

**X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

**XI. Adjournment.**

**Motion 11-05-09-03 (Ward/Liu): Moved, seconded, and passed (4-0; Hayon absent) that the Commission adjourn.**

Public Comment:

None.

Meeting adjourned at 6:53 PM.

Respectfully submitted,

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Catherine Argumedo





**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF REGULAR MEETING**

**June 13, 2011 5:30 P.M.**

**and AGENDA**

**Room 408 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

GOVERNMENT  
DOCUMENTS DEPT

JUN - 9 2011

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PUBLIC LIBRARY

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(c), the Commission should grant a waiver to Doug Shoemaker, the Director of the Mayor's Office of Housing, from the ban on compensation from contractors in San Francisco Campaign and Governmental Conduct Code section 3.234(a)(3). A staff report will be available at the Commission office as well as on the Commission website. (Discussion and possible action.)
- IV. Minutes of the Commission's regular meeting of May 9, 2011. (Discussion and possible action.)
- V. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the budget, the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Discussion.)
- VI. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- VII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- VIII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Chris Rustom by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [sotf@sfgov.org](mailto:sotf@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Rustom or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

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Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics)

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: June 7, 2011  
To: Members, Ethics Commission  
From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director  
Re: Request for Waiver from Post-Employment Ban

---

Doug Shoemaker, the Director of the Mayor's Office of Housing (MOH), has submitted a request for waiver from San Francisco Campaign and Governmental Conduct Code (C&GC Code) section 3.234(a)(3), in order that he may take a job as President of Mercy Housing California, a non-profit housing organization located in San Francisco. For the reasons discussed below and set forth in Mr. Shoemaker's letter, as well as the letters of the Mayor and the Deputy Director of MOH supporting the waiver request, staff recommends that the Commission grant the waiver. Mr. Shoemaker will attend the Commission's June 13, 2011 meeting to address any questions from the Commission.

## Background

According to its website, the mission of the MOH is to provide financing for the development, rehabilitation and purchase of affordable housing in San Francisco. As the City's housing finance agency, MOH guides and coordinates the City's housing policy. It administers a variety of programs – through loans and grants – to finance the development of affordable housing by non-profit and for profit developers, provides financial and educational assistance to first-time homebuyers, and finances housing rehabilitation costs for low-income homeowners. MOH is also responsible for monitoring and ensuring the long-term affordability and physical viability of the City's stock of affordable housing.

In addition, MOH's Community Development Division administers the federally-funded Community Development Block Grant (CDBG) program, which provides decent housing, suitable living environments, and economic development opportunities principally for persons of low- and moderate-income. MOH also administers programs to prevent homelessness and to enable homeless individuals and families to move toward independent living.

## Relevant Law

C&GC Code section 3.234(a)(3) provides the following:

*No current or former employee of the City shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding 12 months where the officer or employee personally and substantially participated in the award of the contract.*

Section 3.234(a)(3) ensures that City contracts are awarded on a fair and impartial basis by prohibiting any officer or employee who personally and substantially participates in the award of a contract from obtaining employment with the contracting party for one year. (Sections 3.234(a)(1) and (2) separately prohibit former City employees and officers from lobbying their former colleagues for one year or switching sides and taking positions against the City in particular matters. Mr. Shoemaker is not seeking a waiver from these two restrictions.)

The Commission may grant a waiver from the ban on employment with City contractors if it “determines that imposing the restriction would cause extreme hardship” for the individual. *See* C&GC Code § 3.234(c)(3). In making this determination, the Commission may consider: the vocation of the individual; the range of employers for whom the individual could work; the steps the individual has taken to find new employment; and any other factors the Commission deems relevant. *See* EC Regulation 3.234-4(a)(5).

## Discussion

Mr. Shoemaker states that as part of his job as department head of MOH, he approves 150-175 grants and loans each year. He signs contracts, loan documents and grant agreements for some 80-90 organizations annually. In the past year, he has approved five contracts with Mercy Housing. Because he “participated personally and substantially in the award of the contracts” by virtue of signing the agreements, he may not accept employment with the Mercy Housing unless the Commission waives the ban in section 3.234(c)(3). *See* Ethics Commission Regulation 3.234-5(e) (the “single act of approving [a contract] may be substantial”). The Commission may grant his waiver request if the Commission determines that imposing the ban would cause extreme hardship for him.

Staff believes that imposing the ban would cause extreme hardship for Mr. Shoemaker. As he explains in his letter, Mr. Shoemaker has worked in the field of non-profit affordable housing throughout his professional career. Because most, if not all, local non-profit organizations in his field have contractual relationships with MOH, for him to seek employment with any of them would pose the same conflict and would require the same waiver request.

Mr. Shoemaker adds that the non-profit affordable housing field is small, so there are relatively few opportunities for employment, particularly in the City where he and his family reside, work and attend school. Staff believes that Mr. Shoemaker may suffer financial as well as professional hardship because he will be unable to pursue his chosen career path if he cannot take the position offered to him by Mercy Housing. As stated in the letter from the Mayor, Mr.

Shoemaker "is faced with the unenviable choice of leaving the field of affordable housing or leaving our City in order to accept work outside of government."

Mr. Shoemaker states that he has not taken any action to influence Mercy Housing to offer him a position. Nor has he signed any contracts or made any decisions regarding its funding since he began talks about possible employment with the organization. Instead, as indicated in the two letters supporting his waiver request, all decisions related to Mercy Housing have been delegated to the Deputy Director of MOH during that period.

The post-employment restriction in section 3.234(a)(3) was designed to prevent corruption, favoritism or inappropriate influence in the City's contracting process. There is no apparent risk of any of those harms here. Moreover, the prohibition would cause undue hardship to Mr. Shoemaker for the reasons discussed above and in his letter. For these reasons, staff recommends that the Commission grant the waiver.

S:\Conflicts of Interest\Waiver Requests\Shoemaker 6.2011\mem to Commission 6.2011.doc





May 16, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

2011 MAY 25 PM 2:37

SAN FRANCISCO  
ETHICS COMMISSION

BY \_\_\_\_\_

Commissioners,

I write seeking a waiver from the Ethics Commission so that I may accept an offer of employment from Mercy Housing California, a non-profit housing organization located in San Francisco. I currently serve as the Director of the Mayor's Office of Housing (MOH), which provides loans and grants to approximately 80-90 organizations annually. I am asking for a waiver because among the 150-175 grants and loans I approve each year as a department head, I have approved 5 contracts to Mercy Housing California in the past year.

After five very rewarding years with the City, I would like to return to private work in the field of non-profit affordable housing, which has been my sole area of employment during my professional career. Prior to joining MOH, I worked for 5 years at the Non-Profit Housing Association and 5 years at Mission Housing Development Corporation. As I will explain in more detail below, I am seeking the waiver because my current position results in similar contracting conflicts for nearly all potential employers in my field. As such, it would be a financial hardship for me if this waiver were denied.

I seek a waiver specifically from Campaign & Governmental Conduct Code section 3.234(a)(3)), which limits employment with City contractors. I am not seeking a waiver of any other portion of the Government Ethics Ordinance. If the waiver is granted, I understand that I will not be allowed to communicate with MOH for at least the 12 months required by law, nor may I involve myself in any matters that I am currently party to as the Director of MOH.

I am painfully aware of the appearance of a conflict of interest. I can assure the Commission that I have taken no actions to create a financial windfall for myself nor have I sought in any way to use my current position to coerce or otherwise influence Mercy Housing to offer me employment. Since I began discussions with Mercy, I have not signed any contracts or made any decisions regarding their funding. While the contracts I have signed with Mercy are important to their mission, they do not represent a disproportionately significant source of operating income to the organization, which currently provides affordable housing to over 23,000 people.

The Mayor's Office of Housing provides loans and grants to non-profit housing and community development organizations. In that capacity, I sign contracts, loan documents and grant agreements for 80-90 organizations annually. So, while I specifically seek a waiver only to accept the offer from Mercy Housing, I have similar conflicts with nearly all of the private

companies and non-profit organizations in my field. I would note that I was recruited to MOH in large part because of my deep background in affordable housing development and finance.

My chosen field is relatively small, so there are relatively few opportunities for employment. In the past two years, I have been aware of only three director-level positions in all of the Bay Area. All three of these positions had the same conflict of interest as the Mercy Housing position. The only other positions I have considered would have required relocation to New York City or Washington, D.C. Ultimately my wife and I decided not to pursue these options, in part because it would have forced her to leave her job at San Francisco General Hospital.

I have been offered the position of President of Mercy Housing California, a position that has not been vacant in the past 20 years. I feel a deep connection to the organization's mission to provide housing and services to those most in need. Their work is focused on providing affordable housing with services to fixed-income seniors, homeless individuals and lower income families. The organization is statewide with offices in San Francisco, Sacramento, and Los Angeles, so it would be possible for me to perform the job of President without being involved on work in San Francisco for the next 12 months.

The Government Ethics Ordinance requires that I describe the contracts which necessitate this request. I have asked MOH's Chief Financial Officer, Gigi Whitley, to review our records for any contracts that I signed in the past 12 months, and she found 5 contracts with Mercy Housing California. I did not approve any of these contracts while I was negotiating employment with Mercy Housing. Four of the contracts are loan agreements to develop or repair affordable housing. As is typical for MOH loans to housing developers, these loans require that Mercy Housing provide housing affordable to low income residents for 55 years.

The specific details of each contract follows:

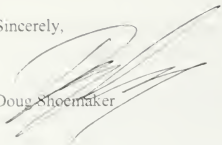
- 1) Sunnydale predevelopment loan (signed June 2010)—this specific contract provides predevelopment funding to develop plans for the rebuilding of the Sunnydale public housing development. The San Francisco Housing Authority awarded the Sunnydale project to a joint venture of Mercy Housing California and the Related Companies in 2008. In 2010 the Citywide Loan Committee, of which I am a member, recommended funding for this project and the Mayor accepted their recommendation. The Citywide Loan committee reviews all applications for funding of affordable housing in the city and is comprised of representatives of the Mayor's Office of Housing, the Department of Public Health, the Human Services Agency and the San Francisco Redevelopment Agency. Prior to Loan Committee action, I was directly involved in underwriting this project. This loan will be fully expended by the end of the year.
- 2) Sunnydale services grant (signed August 2010)—this contract was provided to Mercy Housing to provide social services to the residents of Sunnydale. The grant was the

result of a recommendation in March 2010 by the Citizens Committee on Community Development to then-Mayor Gavin Newsom. The grant was additionally ratified by the Board of Supervisors in May 2010 along with over 100 other grants as part of the annual "Accept and Expend" resolution for the Community Development Block Grant. This grant will be fully expended by the end of the year. As is the case with the Sunnysdale predevelopment loan, I was actively involved in the decision making on this grant.

- 3) Phelan Loop Affordable Housing construction loan (committed in July 2010) -- This affordable housing development for families and emancipated foster youth was awarded to Mercy Housing California and Bernal Heights Community Center via a competitive Request for Proposals/Qualifications in 2009. MOH and Human Rights Commission staff reviewed the proposals, and I accepted their recommendation to award the project to Mercy and Bernal Heights. Following the same process as the Sunnysdale loan, the Citywide Loan Committee recommended funding in July 2010. Because the project has not yet started construction, this loan has not yet been expended.
- 4) Seismic Safety loan to the Arlington Hotel (signed November 2010). The Arlington is an affordable single room occupancy (SRO) hotel in the Tenderloin. Because it is an unreinforced masonry building, the City required that it be seismically retrofitted, an expense that could not be paid from the low rents charged at this property. In order to preserve this housing, MOH staff made a recommendation for funding to the Seismic Safety Loan Committee, which then recommended funding to the Mayor. I was actively involved in the decision to fund this project.
- 5) Permanent Loan to Edith Witt Senior Housing (signed December 2010). MOH made a very small loan to this project, which has been fully expended. Unlike the other contracts, the decision to fund this project was made before I became Director. Even though my role in this contract was minimal, I understand that the restriction in Section 3.234(a)(3) applies because I signed the contract in my role as department head.

In closing, I hope you will grant this waiver. When I took this job five years ago, I fully expected to leave San Francisco when I was done. Fortunately, my daughter made it into a great public school, my wife got a job at San Francisco General Hospital, and we were able to buy a home here in the city. I have deeply appreciated the opportunity to serve San Francisco during my time in government and want to keep serving the city by working in the non-profit housing sector again. I hope you will give me that opportunity.

Sincerely,



Doug Shoemaker

Office of the Mayor  
City & County of San Francisco



Edwin M. Lee

May 24, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

2011 MAY 25 PM 2:37  
SAN FRANCISCO  
ETHICS COMMISSION

BY \_\_\_\_\_

Subject: Waiver Request for Doug Shoemaker

Dear Commissioners:

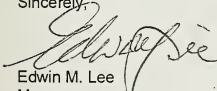
I am writing in support of Doug Shoemaker's request for a waiver from the Ethics Commission to accept a position with Mercy Housing California. Mr. Shoemaker came to me immediately after he was offered this position and explained his desire to seek this waiver. I have read Mr. Shoemaker's letter to the Ethics Commission, and I believe he has demonstrated why a waiver in this circumstance is appropriate.

As Mayor, we seek people like Mr. Shoemaker to serve in government because they have a deep experience and connection to our communities. As Director of the Mayor's Office of Housing (MOH), he signs contracts with virtually every affordable housing developer and many of the community based non-profits that work in San Francisco. As such, he is faced with the unenviable choice of leaving the field of affordable housing or leaving our City in order to accept work outside of government. From my perspective, I would prefer that people like Doug stay in San Francisco and make use of their experience in the non-profit sector.

In regard to decision-making and the specifics of his request, I am confident that Mr. Shoemaker has maintained the highest ethical standards in regard to the Government Ethics Code. In consultation with me, he has delegated decision-making and contract approvals in regard to Mercy Housing to his Deputy Director, Dariush Kayhan. I can also confirm that the affordable housing loans and community development grants that Mr. Shoemaker has signed have been through a rigorous public review process that ensures that there is no opportunity for a public employee to affect future employment opportunities.

As a long-time public servant, I am extremely cognizant of how real and perceived conflicts of interest can affect how our citizens view government. I would not support this request if I were not confident that Mr. Shoemaker has and will continue to take every appropriate measure to look after the interests of the City and County of San Francisco. In closing, I respectfully hope that you will grant his request.

Sincerely,

  
Edwin M. Lee  
Mayor

MAYOR'S OFFICE OF HOUSING  
CITY AND COUNTY OF SAN FRANCISCO



2011 MAY 25 PM 2:37

SAN FRANCISCO  
ETHICS COMMISSION

EDWIN M. LEE

MAYOR

BY

DOUGLAS SHOEMAKER

DIRECTOR

May 24, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Commissioners,

I am writing in regard to Doug Shoemaker's request for a waiver from the Ethics Commission to accept a position with Mercy Housing California. As the Deputy Director of the Mayor's Office of Housing (MOH), I felt it was appropriate to provide the Ethics Commission with independent information about how we have handled the potential conflicts of interest regarding Mr. Shoemaker and Mercy Housing.

At Mr. Shoemaker's request, I have handled all of the decision making and contracting issues related to Mercy Housing since I started at MOH on February 28, 2011. I have assumed his duties on the Citywide Loan Committee as well as oversight of project management staff working on Mercy Housing developments.

I also wanted to provide more information regarding the loans made to Mercy Housing California. Like other MOH development funding, these loans are specifically for expenses related to development: principally construction costs, land acquisition, architectural services, and project management. Each of the loans is available only to the individual project and cannot be used by the parent organization as a source of funding for costs unrelated to the project. Once a development is completed, any unspent funds are returned to MOH.

If you have any questions related to the existing loans or MOH's ongoing operations, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Kayhan", written over a horizontal line.

Dariush Kayhan

Deputy Director

1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103

Phone: (415) 701-5500 Fax: (415) 701-5501 TDD: (415) 701-5503 <http://sf.moh.org/>





# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

## EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of June 13, 2011

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

### 1. Budget.

The Mayor proposed his FY 11-12 budget to the Board of Supervisors on June 1. The budget generally provides the Commission its requested budget, which includes \$2,259,979 for the operating budget and \$2,009,451 for the Election Campaign Fund (ECF), plus a repayment of \$4,079,107 to the ECF. The Board is scheduled to consider the Commission's budget on June 20 and 27. I will continue to work closely with both the Mayor and the Board regarding the Commission's budget.

### 2. November 8, 2011 Election.

Eight candidates for Mayor have submitted an application for public funds. The Commission has disbursed a total of \$1,491,924 to five of these eight candidates; staff is reviewing the applications submitted by the other three candidates.

Candidates for Mayor who are interested in seeking public funding may submit an application for public funds beginning February 8. In order to receive public funds, an interested candidate must demonstrate, among other things, that he/she has received at least \$25,000 in qualifying contributions from at least 250 individuals who reside in the City.

### 3. Investigation and enforcement program.

Since its last regular meeting on May 9, 2011, the Ethics Commission has received two new complaints. There are 23 pending complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	7
Conflict of Interest	4
Governmental Ethics	0
Lobbyist Ordinance	1
Campaign Consultant Ordinance	3
Sunshine Ordinance	8
<b>TOTAL</b>	<b>23</b>

#### 4. Campaign finance disclosure program.

a. Filing deadline. The next filing deadline that applies to all committees falls on August 1, 2011 for the First Semi-Annual statement, which covers the reporting period ending June 30, 2011. In the interim, staff continues to receive and process campaign statements for other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations.

b. Collection of late filing fees and contribution forfeitures. In the FY 10-11, as of May 31, the Commission collected a total of \$40,600 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$182,152 of which waiver requests are pending for \$95,079; and \$21,269 is pending at the Bureau of Delinquent Revenues.

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on pending accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnnie Carter for Community College Board	1226264	Johnnie Carter	6/16/06	\$9,520	\$6,595	\$6,595
2	Committee to Elect M. Valle for Treasurer	1278937	Manuel B. Valle	6/14/07	\$5,525	\$5,525	\$5,525
3	Bill Barnes for District 5	1265969	Alix Rosenthal	1/3/08	\$3,120	\$113	\$113
4	Care Not Cash	1244505	Ronald Jin	2/29/08	\$5,331	\$1,556	<b>\$1,256</b>
5	Omar Khalif for Board of Educ.	1287030	Omar Khalif	7/30/09	\$1,800	\$1,775	\$1,775
6	Myrna Lim for District 11 Sup	1306882	Myrna Lim	7/30/09	\$1,180	\$1,180	\$1,180
7	Myrna Lim for District 11 Sup	1256697	Jia Jun Chen	8/20/07	\$3,855	\$2,775	\$2,775
8	San Francisco Women's Political Committee	1243711	Giselle Barry	5/16/06	\$1,906	\$50	\$50
9	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$2,000	\$2,000	\$2,000
						<b>TOTAL</b>	<b>\$21,269</b>

#### 5. Revenues report.

For FY 10-11, the Commission is budgeted to generate \$78,000 in revenues. As of June 1, 2011, the Commission received and deposited \$105,854 as summarized below. The figure represents collection of approximately 135 percent of expected revenues for FY 10-11.

Revenues received and deposited as of June 1, 2011:

Source	Budgeted Amount FY 10-11	Receipts
Lobbyist Fees	\$8,000	\$40,000
Other Ethics General	\$1,000	\$381
Campaign Finance Fines	\$50,000	\$38,252
Campaign Consultant Fees	\$15,000	\$16,450
Lobbyist Fines	\$1,000	\$2,050
Statements of Economic Interests Fines	\$1,000	\$295
Other Ethics Fines	\$1,000	\$5,626
Campaign Consultant Fines	\$1,000	\$2,800
Total	\$78,000	\$105,854

**6. Draft regulations related to complaints regarding Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force.**

The Sunshine Ordinance Task Force (SOTF) has informed the Commission that its review of draft regulations related to the handling of complaints regarding alleged violations of the Sunshine Ordinance and referrals from the SOTF continues. The SOTF anticipates that it will complete its work sometime this summer.

**7. Lobbyist program.**

As of June 1, 2011, 73 individual lobbyists were registered with the Commission. In FY 10-11, total revenues collected to date amount to \$42,050, which consist of \$40,000 in lobbyist registration fees and \$2,050 in late fines. The April 2011 reporting period deadline is May 16, 2011.

**8. Campaign Consultant program.**

As of May 31, 2011, 29 campaign consultants are active and registered with the Commission. \$16,450 in registration fees and \$2,800 in late fines have been collected during the 2010-2011 fiscal year. The next campaign consultant quarterly report deadline is Wednesday, June 15, 2011. Staff mailed and e-mailed reminder notices to all active campaign consultants two weeks before the deadline. Staff will send an additional e-mail reminder one week prior to the deadline.

**9. Statement of Economic Interests program.**

Between May 3 and June 1, staff entered 382 SEI-related filings into SFEDS. Staff continues to work on processing the filings.

**10. Outreach and Education.**

On May 27, staff met with a delegation of 14 representatives from the municipality of Xi'an, which is the capital city Shaanxi Province, China. The group was visiting the U.S. to attend a training program to learn practices of public administration and anti-corruption in the public sector. Many of the delegates were attorneys general or inspectors general in their district.

On June 9, staff met with a delegation of 20 representatives of the ShanDong Provincial Government of China. The group was interested in discussing the organizational structure of local government, ethics as it applies to employees, and the creation of transparency and anti-corruption in government.

On May 11, staff conducted a Governmental Ethics and Statement of Incompatible Activities Training for the Fire Department.

On May 17, staff conducted two Governmental Ethics and Statement of Incompatible Activities Trainings for the Planning Department.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments.

The following are the currently scheduled live trainings for 2011:

Candidates' Training: June 23, and August 9  
SIA Training for the Planning Department: June 14

The following are web video trainings available on the Commission website:

Department of Building Inspection SIA Training  
Candidates' Training  
Controller's Office SIA Training  
Department on the Environment SIA Training  
Governmental Ethics Ordinance Training for City Employees  
Lobbyist Ordinance Training  
Medical Examiner's Office SIA Training  
Non-Candidate Recipient Committee Training  
Public Utilities Commission SIA Training  
SIA Template Language Training

Respectfully submitted,

  
John St. Croix  
Executive Director

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

*informal advice  
letter issued  
by staff*

BENEDICT Y. HUR  
CHAIRPERSON

May 17, 2011

EMILY S. STUDLEY  
VICE-CHAIRPERSON

Enrique Pearce  
Left Coast Communications  
3 Embarcadero Center, Suite 420  
San Francisco, California 94111

BEVERLY HAYON  
COMMISSIONER

Dear Mr. Pearce:

DOROTHY S. LIU  
COMMISSIONER

You write to ask that the Ethics Commission confirm its oral advice to you via phone on April 27, 2011. The Ethics Commission provides two kinds of advice: written formal opinions or informal advice. *See* S.F. Charter § C3.699-12. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice. *Id.* Informal advice does not provide similar protection. *Id.*

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Because your request seeks advice regarding hypothetical facts and does not describe a specific situation involving your responsibilities or those of your clients, the Commission is treating your question as a request for informal advice.

In your letter, you state:

*If a campaign consultant is to work on a general purpose committee created for persuading a particular candidate to run for elective office, would it be legal for the same consultant to be hired by the candidate if he/she subsequently decides to enter the race. For purposes of your opinion, please assume that the general purpose committee established to persuade a candidate to run, will accept and expend contributions.*

Because this hypothetical is quite different from the hypothetical facts you presented during your original telephone conversation with staff, the Commission cannot "confirm" its oral advice to you. In a telephone conversation with you subsequent to receiving the letter, you reiterated that no committee has yet been formed to persuade the individual to become a candidate. As we discussed, your hypothetical question is: if a campaign consultant who works for the to-be-established committee performing campaign consulting services for the committee, i.e., participating in campaign management or developing or participating in the development of campaign strategy, may that campaign consultant do the same for Candidate A when and if Candidate A decides to become a candidate for City elective office? In general, under the Campaign Consultant Ordinance, there is no apparent bar against a campaign consultant from providing such services.

However, we also discussed section 1.115 of the Campaign and Governmental Conduct Code, which bars coordination among committees. Section 1.115 provides the following:

## SEC. 1.115. COORDINATION OF EXPENDITURES.

### (a) GENERAL.

An expenditure is not considered independent and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit the expenditure is made, if the expenditure funds a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate and is made under the following circumstance:

(1) the expenditure is made at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, the candidate on whose behalf, or for whose benefit, the expenditure is made; or

(2) the communication funded by the expenditure is created, produced or disseminated:

(A) after the candidate has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication; or

(B) after discussion between the creator, producer or distributor of a communication, or the person paying for that communication, and the candidate or committee regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is agreement on any of these topics.

### (b) REBUTTABLE PRESUMPTION OF COORDINATION.

In addition to subsection (a) of this section, there shall be a presumption that an expenditure funding a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate is not independent of the candidate on whose behalf or for whose benefit the expenditure is made, when:

(1) it is based on information about the candidate or committee's campaign needs or plans provided to the spender by the candidate;

(2) it is made by or through any agent of the candidate in the course of the agent's involvement in the current campaign;

(3) the spender retains the services of a person, including a campaign consultant, who provides, or has provided, the candidate with professional services related to campaign or fundraising strategy for that same election;

(4) the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate; or

(5) in the same election that the expenditure is made, the spender or spender's agent is serving or served in an executive or policymaking role for the candidate's campaign or participated in strategy or policy making discussions with the candidate's campaign relating to the candidate's pursuit of election to office and the candidate is pursuing the same office as a candidate whose nomination or election the expenditure is intended to influence.

### (c) EXCEPTIONS.

Notwithstanding the foregoing, an expenditure shall not be considered a contribution to a candidate merely because:

(1) the spender interviews a candidate on issues affecting the spender;

(2) the spender has obtained a photograph, biography, position paper, press release, or similar material from the candidate;

(3) the spender has previously made a contribution to the candidate;

(4) the spender makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditures;



(5) the spender has invited the candidate or committee to make an appearance before the spender's members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditure;

(6) the spender informs a candidate that the spender has made an expenditure provided that there is no other exchange of information not otherwise available to the public, relating to the details of the expenditure; or

(7) the expenditure is made at the request or suggestion of the candidate for the benefit of another candidate or committee.

(d) DEFINITION.

For purposes of this section, the terms "candidate" includes an agent of the candidate when the agent is acting within the course and scope of the agency.

We both agreed that section 1.115 could apply in this situation, such that expenditures made by the committee might be considered coordinated expenditures, depending on the facts. I hope this has been helpful to you. Please let me know if you have questions.

Sincerely,

John St. Croix  
Executive Director

By: Mabel Ng  
Deputy Executive Director

S:\ADVICE\campaign consultant\11-0429 Pearce\letter to Pearce 5.2011.doc

3 Embarcadero Center, Suite 420, San Francisco, CA 94111  
2011 APR 29 AM 11:17SAN FRANCISCO  
ETHICS COMMISSIONVIA U.S. MAIL

BY \_\_\_\_\_

April 27, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102**Re: Request for Written Advice**

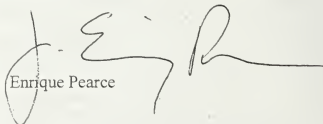
To Whom This May Concern:

I write to confirm the advice I received from the Ethics Commission today via phone. My question regards the following scenario:

If a campaign consultant is to work on a general purpose committee created for persuading a particular candidate to run for elective office, would it be legal for the same consultant to be hired by the candidate if he/she subsequently decides to enter the race. For purposes of your opinion, please assume that the general purpose committee established to persuade a candidate to run, will accept and expend contributions.

Please provide a written response detailing whether or not this would be permissible under applicable local and state laws and regulations. Thank you for your attention to this matter.

Sincere regards,

  
Enrique Pearce

Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
June 13, 2011  
Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

GOVERNMENT  
DOCUMENTS DEPT

JUL - 7 2011

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**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 5:31 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner. Vice-Chairperson Studley and Commissioner Ward were excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Chief Enforcement Officer.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: James Chaffee, Dr. Derek Kerr, Dr. Maria Rivero, Charley Marsteller David Pilpel, Don Falk, and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Memorandum re: Request for Waiver from Post Employment Ban, dated June 7, 2011
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission on May 9, 2011
- Executive Director's Report to the Ethics Commission for the Meeting of June 13, 2011

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

James Chaffee stated that a complaint regarding Jewelle Gomez has taken a long time to come before the Ethics Commission. He stated that the Public Library has a long history of betraying the public. He stated that without accountability there will never be democracy. He stated that citizens should be supported in their quest for open government.

Dr. Derek Kerr stated that he was a whistleblower and was terminated from his City position. He stated that his complaint with the Ethics Commission has been going on for too long. He stated that the Ethics Commission has done nothing regarding his complaint. He stated that the monthly Executive Director's reports should reflect how long a complaint has been pending.

Dr. Maria Rivero stated that she filed a complaint along with Dr. Kerr. She stated that she was forced to resign from her position. She stated the Ethics Commission did nothing while she was retaliated against.

David Pilpel stated that the Executive Director's report does not include a list of persons with overdue fines. He stated that this should be included in the report.

Charley Marsteller stated that he was pleased with how the public financing program has proceeded in this year. He stated that audit staff should expand its audits to lobbyists and SEIs to see if there is any problem in those areas.

**III. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(c), the Commission should grant a waiver to Doug Shoemaker, the Director of the Mayor's Office of Housing, from the ban on compensation from contractors in San Francisco Campaign and Governmental Conduct Code section 3.234(a)(3).**

Executive Director St. Croix introduced the waiver request.

Doug Shoemaker stated that his office provides financing to affordable housing developers. He stated that this has been his chosen field for over 15 years, and that the field is relatively small. He stated he has the opportunity to work for Mercy Housing. He stated that he has enjoyed his position with government, but this offer is an unbelievable opportunity.

Commissioner Liu stated that the factors here meet the case for an extreme hardship exemption.

Mr. Shoemaker responded to Commissioner Hayon stating that Mercy House recruited him for this position and that his current position is an appointed position with the risk of a new mayor appointing another person.

Responding to Commissioner Liu, Mr. Shoemaker stated that within the last year only three similar positions in the City have become available. He stated that San Francisco is his home and does not want to move his family to pursue a career opportunity. He stated that the other three organizations also received City funding.

Responding to Chairperson Hur, Mr. Shoemaker stated that he was aware of the employment ban when he accepted his current position. He stated that the value of the Mercy House loans are at least \$15 million. He stated that the loans go to non-profit entities to make repairs to low income housing.

Chairperson Hur stated that he is sympathetic; however, this situation appears to be the archetypal instance that the law was designed to protect against.

Mr. Shoemaker stated that his position requires him to sign off on the contracts to all entities. He stated that the public vetting process is extensive regarding financing. He stated that he is not the sole actor in making a loan approval. He stated the loans do not come to him to sign off on until the loans are ready to close. He stated that Mercy House primarily works at the state level.

Responding to Chairperson Hur, Mr. Shoemaker stated that he was offered the position about six weeks ago.

Responding to Commissioner Liu, Mr. Shoemaker stated that he is not seeking a waiver prohibiting communications with the City. He stated that there are other persons within Mercy House who would handle City communications.

Public Comment:

Don Falk, Executive Director of the Tenderloin Neighborhood Association, stated that the affordable housing community is very small, and the work is very specialized. He confirmed that there are very few candidates, and it is reasonable to expect a City officer in this field would re-enter the private sector.

Chairperson Hur stated that the matter should be continued when the full Ethics Commission is present.

Commissioner Liu stated that Mr. Shoemaker should provide any additional information that would aid the Ethics Commission to determine if he clearly meets the hardship exemption.

**Motion 11-13-06-01 (Liu/Hur): Moved, seconded, and passed (3-0; Ward and Studley absent) that the Commission continue this matter to the next meeting of the Ethics Commission.**

Public Comment:

None.

**IV. Minutes of the Commission's regular meeting of April 11, 2011.**

**Motion 11-13-06-02 (Hayon/Liu): Moved, seconded, and passed (3-0, Ward and Studley absent) that the Ethics Commission adopt the minutes of the May 9, 2011, regular meeting.**

Public Comment:

None.

**V. Executive Director's Report.**

Executive Director St. Croix stated that the Ethics Commission received the budget that it requested. He stated that the budget will go before the Board of Supervisors in June.

Public Comment:

None.

**VI. Items for future meetings.**

Deputy Executive Director Ng responded to Commissioner Liu, stating that staff wanted all commissioners to be present when Dr. Melinek's SIA issue comes up for consideration. She stated that she is presenting to the Public Library Commission about its SIA this August, and anticipates that the issue will return to the Ethics Commission for consideration is September.

Executive Director St. Croix explained the requirements to hold a special meeting on Mr. Shoemaker's matter.

Public Comment:

None.

**VII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

**VIII. Adjournment.**

**Motion 11-13-06-3 (Hayon/Liu) Moved, seconded, and passed (3-0, Ward and Studley absent) that the Ethics Commission adjourn.**

Public Comment:

None.

Meeting adjourned at 6:26 PM.

Respectfully submitted,

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Richard Mo



Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
June 13, 2011  
Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

GOVERNMENT  
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JUL 21 2011

**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 5:31 PM.

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COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner. Vice-Chairperson Studley and Commissioner Ward were excused.

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Public Comment:

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Public Comment:

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Executive Director St. Croix explained the requirements to hold a special meeting on Mr. Shoemaker's matter.

Public Comment:

None.

**VII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

**VIII. Adjournment.**

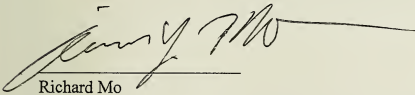
**Motion 11-13-06-3 (Hayon/Liu) Moved, seconded, and passed (3-0, Ward and Studley absent) that the Ethics Commission adjourn.**

Public Comment:

None.

Meeting adjourned at 6:26 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Mo", is written over a horizontal line. The signature is stylized and cursive.

Richard Mo





**SAN FRANCISCO ETHICS COMMISSION  
NOTICE OF SPECIAL MEETING**

**June 28, 2011 2:00 P.M.**

**and AGENDA**

**Room 408 City Hall**

**1 Dr. Carlton B. Goodlett Place, San Francisco**

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JUN 24 2011

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- I. Call to order and roll call.
- II. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(c), the Commission should grant a waiver to Doug Shoemaker, the Director of the Mayor's Office of Housing, from the ban on compensation from contractors in San Francisco Campaign and Governmental Conduct Code section 3.234(a)(3). The Commission will continue its discussion of this matter, which was discussed at the Commission's regular June 13, 2011 meeting. A staff report is available at the Commission office as well as on the Commission website. (Discussion and possible action.)
- III. Adjournment.

**Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Chris Ruston by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at [solfa@sfgov.org](mailto:solfa@sfgov.org). Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Ruston or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

If any materials related to an item on this agenda have been distributed to the Ethics Commission after distribution of the agenda packet, those materials are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics)



June 22, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Commissioners,

I am writing to provide more information about two issues that were raised at the hearing on June 13 regarding my waiver request. As I stated in my initial letter, I am seeking a waiver from the Ethics Commission so that I may accept an offer of employment to serve as President of Mercy Housing California, a statewide non-profit housing organization located in San Francisco. I currently serve as the Director of the Mayor's Office of Housing (MOH). I am asking for a waiver because among the 175 grants and loans I signed last year as a department head, I signed five contracts with Mercy Housing California..

At the June 13<sup>th</sup> hearing, Commissioners asked for more information about the hardship request in light of job opportunities that exist in my area of employment. In addition, there was a request for more details regarding the contracts that I signed on behalf of the Mayor's Office of Housing. I appreciate the opportunity to provide the following additional information regarding these issues.

#### **The hardship request**

Mercy Housing California is a non-profit affordable housing provider that provides affordable housing and services to lower-income and homeless seniors and families. The Mayor's Office of Housing is the City's housing finance agency, so I sign all of the City's loans and grants for affordable housing and community development activities.

There are approximately fifteen non-profit organizations and for-profit companies providing affordable housing in San Francisco, and I have signed contracts with nearly all of them in the past year. These contracted entities include Asian Neighborhood Design; Chinatown Community Development Center; Bernal Heights Neighborhood Center; Community Housing Partnership; Dolores Street Community Services; Episcopal Community Services; GP/TODCO; the John Stewart Company; Mission Housing Development Corporation; Related Companies of California; San Francisco Housing Development Corporation; Swords to Plowshares; and Tenderloin Neighborhood Development Corporation. I have signed multiple contracts with nine of these fourteen organizations in the past year.

Therefore, responsibly executing my duties for the City has created contracting conflicts with nearly all local affordable housing developers. Because Mercy stands out among this small pool of potential local employers in my field as one of the few that operates throughout California, and because this position as its President has not been open in over twenty years, I was honored to be recruited for the job.

I have dedicated my entire professional life to the field of affordable housing. My wife is a full-time doctor at San Francisco General and our kids attend school in the city. I am passionate about affordable housing and would be deeply saddened if I was forced to leave the field or San Francisco. Put simply, it would be nearly impossible for me to remain in the city and my chosen profession without a waiver.

### **MOH Loans and Grants**

In an effort to ensure that I comply fully with all applicable conflict laws, I have conferred several times in the past few months with Deputy City Attorney Jon Givner. Based on those discussions and the questions raised at the hearing, I wanted to provide the Commission with more information about the loans and grants that I signed.

#### **a. Contracting Process**

MOH's proposed grants and loans go through an external review and recommendation process. Once those committees have reviewed a particular proposal, MOH forwards their recommendation to the Mayor and/or the Board of Supervisors. If the contract is approved, the MOH Director then executes the grant or loan, which is typically also signed by the Mayor. Approximately 30% of grantees or borrowers from MOH receive multiple contracts.

Three of these contracts were reviewed by a four-member Citywide Loan Committee, of which MOH has one seat. In the case of the Seismic Safety Loan, the proposal was reviewed by a five-member committee of which MOH has one seat. In the case of the services grant, the funding proposal was reviewed by a seven-member Citizens Committee on Community Development (CCCD), which then recommended funding to the Mayor and Board of Supervisors.

#### **b. Personal Involvement or Non-Involvement**

Since my initial letter, I have reviewed in more detail my involvement or non-involvement in each of the five contracts that I signed. For three of the five contracts, I actively participated in the process of awarding or recommending the contract. For the Arlington and Edith Witt, I did not play a substantive or personal role with the exception of signing the contract. However, I understand that because of my signature, the restriction in Section 3.234(a)(3) still necessitates a waiver request.



Contracts in which I actively participated in the awarding of the contract

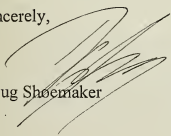
1. Sunnydale Predevelopment loan – June 2010
  - a. \$1.725 million loan to a joint venture with the Related Companies of California
  - b. I participated in the Citywide Loan Committee review and recommendation.
2. Phelan Loop Affordable Housing construction loan – July 2010
  - a. \$4.1 million loan to a Joint Venture with Bernal Heights Neighborhood Center.
  - b. I participated in the Citywide Loan Committee review and recommendation.
3. Sunnydale services grant – August 2010
  - a. \$175,000 Community Development Block Grant
  - b. I participated in the recommendation to the CCCD in March 2010.

Contracts in which I did not personally or substantively participate in the award

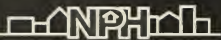
4. Seismic Safety loan to the Arlington Hotel – November 2010.
  - a. \$15 million loan to seismically retrofit an Single Room Occupancy Hotel (SRO) that serves extremely low-income adults
  - b. I did not participate in the Seismic Safety Loan Committee in recommending this loan to the Mayor nor did I play a substantive role in developing the recommendation.
5. Operating grant to Edith Witt Senior Housing
  - a. \$78,000 contract signed in December 2010
  - b. Grant subsidizes the rents of homeless seniors.
  - c. I did not participate in the Citywide Loan Committee review of this contract nor did I play a substantive role in developing the recommendation.

I hope that this additional information addresses the questions that were raised at the hearing. I want to assure the Commission that I do not take this request lightly. I would not have pursued this request if I was not certain of the rigorous and transparent public process by which these contracts were awarded. Thank you for your consideration.

Sincerely,



Doug Shoemaker



## THE NON-PROFIT HOUSING ASSOCIATION OF NORTHERN CALIFORNIA

**THE  
VOICE OF  
AFFORDABLE  
HOUSING  
SINCE 1979**



### EXECUTIVE DIRECTOR

Dianne J. Spaulding

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of Housing

#### Matthew O. Franklin

MidPen Housing Corporation

#### Ben Golvin

Equity Community Builders

#### Philip Kilbridge

Director for Humanity  
Greener, San Francisco

#### Kevin Knudsen

Community Economics

#### Mary Murtugh

EAH, Inc.

#### John Stewart

The John Stewart Company

June 22, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue  
San Francisco, CA 94102

Dear Commissioners:

I am writing in regard to Douglas Shoemaker's request for a waiver of the post-employment restrictions on working for a city contractor.

As the Executive Director of the Non-Profit Housing Association of Northern California (NPH) for the past 20 years, I believe that I am in a unique position to comment on the question of employment opportunities in the field of affordable housing development.

The mission of the Non-Profit Housing Association of Northern California (NPH) is to advance affordable housing as the foundation for thriving individuals, families and neighborhoods. We represent housing developers, local governments, and related private sector companies throughout the Bay Area.

In my position as the Executive Director of NPH (and in our organizational role and as a capacity builder of the field) we are an immediate and constant point of entry for all job seekers in this field. I can affirm that position(s) such as the one of President of Mercy Housing California come available infrequently and the competition for these positions is fierce. There is a trend in our field for senior managers and executive level positions to be held for 20, 30, and even 40 years. So, this opportunity does not open up often and truly this opportunity is rare.

I think it is also helpful to note that the current chaos created by the California Legislature and Governor to agree on the value of Redevelopment Agencies in our state has created real uncertainty about affordable housing development and funding to actually build affordable housing anywhere. This has resulted in layoffs for all sectors in the housing field – private, non-profit and public. That translates into fewer jobs and less career opportunities.

I firmly believe that the vast majority of Mr. Shoemaker's potential job options have the same types of conflicts as the Mercy Housing California position. Because affordable housing development requires significant public subsidies, both for-profit and non-profit developers are compelled to

request funds from local governments to purchase land and pay for construction costs that the low rents do not support.

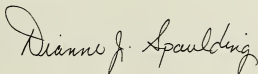
I have reviewed our records and determined that there are approximately 15 affordable housing developers conducting business in San Francisco. I am confident that ALL of them routinely receive either grants or loans from the Mayor's Office of Housing.

As I am sure you may know, many people leaving government do not choose to go back to affordable housing or the non-profit sector because the salaries are significantly lower than the employment opportunities in market-rate housing and community development lending companies for example.

In closing, I also wanted the commissioners to know how important it is to our field that we allow people like Mr. Shoemaker to return to the non-profit sector after a stint in government. It is essential that we recognize younger leaders such as Mr. Shoemaker and allow them to assume leadership positions where they can grow, thrive and sustain these valuable affordable housing organizations into the future.

Thank you for your consideration and I ask that you grant Mr. Shoemaker his waiver.

Sincerely,

A handwritten signature in cursive script that reads "Dianne J. Spaulding". The signature is written in dark ink and is positioned above the typed name and title.

Dianne J. Spaulding  
Executive Director  
Non-Profit Housing Association of Northern California (NPH)

June 20, 2011

Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: Douglas Shoemaker request for waiver

To Whom It May Concern:

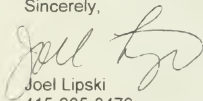
On July 22, 2009 the Seismic Safety Loan Program (SSLP) Loan Committee approved a loan to Mercy Housing California in the amount of \$15,000,000 for purposes of upgrading the seismic systems at the Arlington Hotel at 480 Ellis Street in San Francisco.

This letter is to confirm that pursuant to Section 66A.13 of the San Francisco Administrative Code, the Loan Committee was comprised of five members, including myself, who as Housing Development Director at the Mayor's Office of Housing (MOH) and Program Administrator for the SSLP was a duly authorized member of the Loan Committee. In that capacity and as the only MOH staff member who was a member of the Loan Committee at the time, I participated in the Committee's discussion and approval of this loan on behalf of MOH.

Mr. Douglas Shoemaker, Director of MOH was not a member of the Loan Committee at that time and did not participate in the Loan Committee's decision-making process for this loan.

I can be contacted as described below if I can be of any further assistance in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joel Lipski", is written over the printed name and contact information.

Joel Lipski  
415-205-3476

[joellipski@comcast.net](mailto:joellipski@comcast.net)



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

AMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: June 7, 2011

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

Re: Request for Waiver from Post-Employment Ban

---

Doug Shoemaker, the Director of the Mayor's Office of Housing (MOH), has submitted a request for waiver from San Francisco Campaign and Governmental Conduct Code (C&GC Code) section 3.234(a)(3), in order that he may take a job as President of Mercy Housing California, a non-profit housing organization located in San Francisco. For the reasons discussed below and set forth in Mr. Shoemaker's letter, as well as the letters of the Mayor and the Deputy Director of MOH supporting the waiver request, staff recommends that the Commission grant the waiver. Mr. Shoemaker will attend the Commission's June 13, 2011 meeting to address any questions from the Commission.

### Background

According to its website, the mission of the MOH is to provide financing for the development, rehabilitation and purchase of affordable housing in San Francisco. As the City's housing finance agency, MOH guides and coordinates the City's housing policy. It administers a variety of programs – through loans and grants – to finance the development of affordable housing by non-profit and for profit developers, provides financial and educational assistance to first-time homebuyers, and finances housing rehabilitation costs for low-income homeowners. MOH is also responsible for monitoring and ensuring the long-term affordability and physical viability of the City's stock of affordable housing.

In addition, MOH's Community Development Division administers the federally-funded Community Development Block Grant (CDBG) program, which provides decent housing, suitable living environments, and economic development opportunities principally for persons of low- and moderate-income. MOH also administers programs to prevent homelessness and to enable homeless individuals and families to move toward independent living.

## Relevant Law

C&GC Code section 3.234(a)(3) provides the following:

*No current or former employee of the City shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding 12 months where the officer or employee personally and substantially participated in the award of the contract.*

Section 3.234(a)(3) ensures that City contracts are awarded on a fair and impartial basis by prohibiting any officer or employee who personally and substantially participates in the award of a contract from obtaining employment with the contracting party for one year. (Sections 3.234(a)(1) and (2) separately prohibit former City employees and officers from lobbying their former colleagues for one year or switching sides and taking positions against the City in particular matters. Mr. Shoemaker is not seeking a waiver from these two restrictions.)

The Commission may grant a waiver from the ban on employment with City contractors if it “determines that imposing the restriction would cause extreme hardship” for the individual. See C&GC Code § 3.234(c)(3). In making this determination, the Commission may consider: the vocation of the individual; the range of employers for whom the individual could work; the steps the individual has taken to find new employment; and any other factors the Commission deems relevant. See EC Regulation 3.234-4(a)(5).

## Discussion

Mr. Shoemaker states that as part of his job as department head of MOH, he approves 150-175 grants and loans each year. He signs contracts, loan documents and grant agreements for some 80-90 organizations annually. In the past year, he has approved five contracts with Mercy Housing. Because he “participated personally and substantially in the award of the contracts” by virtue of signing the agreements, he may not accept employment with the Mercy Housing unless the Commission waives the ban in section 3.234(c)(3). See Ethics Commission Regulation 3.234-5(e) (the “single act of approving [a contract] may be substantial”). The Commission may grant his waiver request if the Commission determines that imposing the ban would cause extreme hardship for him.

Staff believes that imposing the ban would cause extreme hardship for Mr. Shoemaker. As he explains in his letter, Mr. Shoemaker has worked in the field of non-profit affordable housing throughout his professional career. Because most, if not all, local non-profit organizations in his field have contractual relationships with MOH, for him to seek employment with any of them would pose the same conflict and would require the same waiver request.

Mr. Shoemaker adds that the non-profit affordable housing field is small, so there are relatively few opportunities for employment, particularly in the City where he and his family reside, work and attend school. Staff believes that Mr. Shoemaker may suffer financial as well as professional hardship because he will be unable to pursue his chosen career path if he cannot take the position offered to him by Mercy Housing. As stated in the letter from the Mayor, Mr.



Shoemaker “is faced with the unenviable choice of leaving the field of affordable housing or leaving our City in order to accept work outside of government.”

Mr. Shoemaker states that he has not taken any action to influence Mercy Housing to offer him a position. Nor has he signed any contracts or made any decisions regarding its funding since he began talks about possible employment with the organization. Instead, as indicated in the two letters supporting his waiver request, all decisions related to Mercy Housing have been delegated to the Deputy Director of MOH during that period.

The post-employment restriction in section 3.234(a)(3) was designed to prevent corruption, favoritism or inappropriate influence in the City’s contracting process. There is no apparent risk of any of those harms here. Moreover, the prohibition would cause undue hardship to Mr. Shoemaker for the reasons discussed above and in his letter. For these reasons, staff recommends that the Commission grant the waiver.

S:\Conflicts of Interest\Waiver Requests\Shoemaker 6.2011\mem to Commission 6.2011.doc

May 16, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

2011 MAY 25 PM 2:37

SAN FRANCISCO  
ETHICS COMMISSION

Commissioners,

I write seeking a waiver from the Ethics Commission so that I may accept an offer of employment from Mercy Housing California, a non-profit housing organization located in San Francisco. I currently serve as the Director of the Mayor's Office of Housing (MOH), which provides loans and grants to approximately 80-90 organizations annually. I am asking for a waiver because among the 150-175 grants and loans I approve each year as a department head, I have approved 5 contracts to Mercy Housing California in the past year.

After five very rewarding years with the City, I would like to return to private work in the field of non-profit affordable housing, which has been my sole area of employment during my professional career. Prior to joining MOH, I worked for 5 years at the Non-Profit Housing Association and 5 years at Mission Housing Development Corporation. As I will explain in more detail below, I am seeking the waiver because my current position results in similar contracting conflicts for nearly all potential employers in my field. As such, it would be a financial hardship for me if this waiver were denied.

I seek a waiver specifically from Campaign & Governmental Conduct Code section 3.234(a)(3)), which limits employment with City contractors. I am not seeking a waiver of any other portion of the Government Ethics Ordinance. If the waiver is granted, I understand that I will not be allowed to communicate with MOH for at least the 12 months required by law, nor may I involve myself in any matters that I am currently party to as the Director of MOH.

I am painfully aware of the appearance of a conflict of interest. I can assure the Commission that I have taken no actions to create a financial windfall for myself nor have I sought in any way to use my current position to coerce or otherwise influence Mercy Housing to offer me employment. Since I began discussions with Mercy, I have not signed any contracts or made any decisions regarding their funding. While the contracts I have signed with Mercy are important to their mission, they do not represent a disproportionately significant source of operating income to the organization, which currently provides affordable housing to over 23,000 people.

The Mayor's Office of Housing provides loans and grants to non-profit housing and community development organizations. In that capacity, I sign contracts, loan documents and grant agreements for 80-90 organizations annually. So, while I specifically seek a waiver only to accept the offer from Mercy Housing, I have similar conflicts with nearly all of the private

companies and non-profit organizations in my field. I would note that I was recruited to MOH in large part because of my deep background in affordable housing development and finance.

My chosen field is relatively small, so there are relatively few opportunities for employment. In the past two years, I have been aware of only three director-level positions in all of the Bay Area. All three of these positions had the same conflict of interest as the Mercy Housing position. The only other positions I have considered would have required relocation to New York City or Washington, D.C. Ultimately my wife and I decided not to pursue these options, in part because it would have forced her to leave her job at San Francisco General Hospital.

I have been offered the position of President of Mercy Housing California, a position that has not been vacant in the past 20 years. I feel a deep connection to the organization's mission to provide housing and services to those most in need. Their work is focused on providing affordable housing with services to fixed-income seniors, homeless individuals and lower income families. The organization is statewide with offices in San Francisco, Sacramento, and Los Angeles, so it would be possible for me to perform the job of President without being involved on work in San Francisco for the next 12 months.

The Government Ethics Ordinance requires that I describe the contracts which necessitate this request. I have asked MOH's Chief Financial Officer, Gigi Whitley, to review our records for any contracts that I signed in the past 12 months, and she found 5 contracts with Mercy Housing California. I did not approve any of these contracts while I was negotiating employment with Mercy Housing. Four of the contracts are loan agreements to develop or repair affordable housing. As is typical for MOH loans to housing developers, these loans require that Mercy Housing provide housing affordable to low income residents for 55 years.

The specific details of each contract follows:

- 1) Sunnydale predevelopment loan (signed June 2010)—this specific contract provides predevelopment funding to develop plans for the rebuilding of the Sunnydale public housing development. The San Francisco Housing Authority awarded the Sunnydale project to a joint venture of Mercy Housing California and the Related Companies in 2008. In 2010 the Citywide Loan Committee, of which I am a member, recommended funding for this project and the Mayor accepted their recommendation. The Citywide Loan committee reviews all applications for funding of affordable housing in the city and is comprised of representatives of the Mayor's Office of Housing, the Department of Public Health, the Human Services Agency and the San Francisco Redevelopment Agency. Prior to Loan Committee action, I was directly involved in underwriting this project. This loan will be fully expended by the end of the year.
- 2) Sunnydale services grant (signed August 2010)—this contract was provided to Mercy Housing to provide social services to the residents of Sunnydale. The grant was the

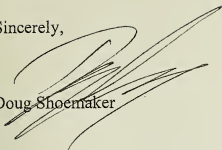
result of a recommendation in March 2010 by the Citizens Committee on Community Development to then-Mayor Gavin Newsom. The grant was additionally ratified by the Board of Supervisors in May 2010 along with over 100 other grants as part of the annual "Accept and Expend" resolution for the Community Development Block Grant. This grant will be fully expended by the end of the year. As is the case with the Sunnydale predevelopment loan, I was actively involved in the decision making on this grant.

- 3) Phelan Loop Affordable Housing construction loan (committed in July 2010) -- This affordable housing development for families and emancipated foster youth was awarded to Mercy Housing California and Bernal Heights Community Center via a competitive Request for Proposals/Qualifications in 2009. MOH and Human Rights Commission staff reviewed the proposals, and I accepted their recommendation to award the project to Mercy and Bernal Heights. Following the same process as the Sunnydale loan, the Citywide Loan Committee recommended funding in July 2010. Because the project has not yet started construction, this loan has not yet been expended.
- 4) Seismic Safety loan to the Arlington Hotel (signed November 2010). The Arlington is an affordable single room occupancy (SRO) hotel in the Tenderloin. Because it is an unreinforced masonry building, the City required that it be seismically retrofitted, an expense that could not be paid from the low rents charged at this property. In order to preserve this housing, MOH staff made a recommendation for funding to the Seismic Safety Loan Committee, which then recommended funding to the Mayor. I was actively involved in the decision to fund this project.
- 5) Permanent Loan to Edith Witt Senior Housing (signed December 2010). MOH made a very small loan to this project, which has been fully expended. Unlike the other contracts, the decision to fund this project was made before I became Director. Even though my role in this contract was minimal, I understand that the restriction in Section 3.234(a)(3) applies because I signed the contract in my role as department head.

In closing, I hope you will grant this waiver. When I took this job five years ago, I fully expected to leave San Francisco when I was done. Fortunately, my daughter made it into a great public school, my wife got a job at San Francisco General Hospital, and we were able to buy a home here in the city. I have deeply appreciated the opportunity to serve San Francisco during my time in government and want to keep serving the city by working in the non-profit housing sector again. I hope you will give me that opportunity.

Sincerely,

Doug Shoemaker

A stylized, handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a cursive representation of the name Doug Shoemaker.

Office of the Mayor  
City & County of San Francisco



Edwin M. Lee

2011 MAY 25 PM 2:37

CALL 415-380  
ETHICS COMMISSION

May 24, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

BY: \_\_\_\_\_

Subject: Waiver Request for Doug Shoemaker

Dear Commissioners:

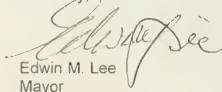
I am writing in support of Doug Shoemaker's request for a waiver from the Ethics Commission to accept a position with Mercy Housing California. Mr. Shoemaker came to me immediately after he was offered this position and explained his desire to seek this waiver. I have read Mr. Shoemaker's letter to the Ethics Commission, and I believe he has demonstrated why a waiver in this circumstance is appropriate.

As Mayor, we seek people like Mr. Shoemaker to serve in government because they have a deep experience and connection to our communities. As Director of the Mayor's Office of Housing (MOH), he signs contracts with virtually every affordable housing developer and many of the community based non-profits that work in San Francisco. As such, he is faced with the unenviable choice of leaving the field of affordable housing or leaving our City in order to accept work outside of government. From my perspective, I would prefer that people like Doug stay in San Francisco and make use of their experience in the non-profit sector.

In regard to decision-making and the specifics of his request, I am confident that Mr. Shoemaker has maintained the highest ethical standards in regard to the Government Ethics Code. In consultation with me, he has delegated decision-making and contract approvals in regard to Mercy Housing to his Deputy Director, Dariush Kayhan. I can also confirm that the affordable housing loans and community development grants that Mr. Shoemaker has signed have been through a rigorous public review process that ensures that there is no opportunity for a public employee to affect future employment opportunities.

As a long-time public servant, I am extremely cognizant of how real and perceived conflicts of interest can affect how our citizens view government. I would not support this request if I were not confident that Mr. Shoemaker has and will continue to take every appropriate measure to look after the interests of the City and County of San Francisco. In closing, I respectfully hope that you will grant his request.

Sincerely,



Edwin M. Lee  
Mayor

**MAYOR'S OFFICE OF HOUSING  
CITY AND COUNTY OF SAN FRANCISCO**



2011 MAY 29 PM 2:37

SAN FRANCISCO  
ETHICS COMMISSION

EDWIN M. LEE  
MAYOR

BY \_\_\_\_\_  
DOUGLAS SHOEMAKER  
DIRECTOR

May 24, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Commissioners,

I am writing in regard to Doug Shoemaker's request for a waiver from the Ethics Commission to accept a position with Mercy Housing California. As the Deputy Director of the Mayor's Office of Housing (MOH), I felt it was appropriate to provide the Ethics Commission with independent information about how we have handled the potential conflicts of interest regarding Mr. Shoemaker and Mercy Housing.

At Mr. Shoemaker's request, I have handled all of the decision making and contracting issues related to Mercy Housing since I started at MOH on February 28, 2011. I have assumed his duties on the Citywide Loan Committee as well as oversight of project management staff working on Mercy Housing developments.

I also wanted to provide more information regarding the loans made to Mercy Housing California. Like other MOH development funding, these loans are specifically for expenses related to development: principally construction costs, land acquisition, architectural services, and project management. Each of the loans is available only to the individual project and cannot be used by the parent organization as a source of funding for costs unrelated to the project. Once a development is completed, any unspent funds are returned to MOH.

If you have any questions related to the existing loans or MOH's ongoing operations, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dariush Kayhan".

Dariush Kayhan

Deputy Director





Minutes of the Special Meeting of  
The San Francisco Ethics Commission  
June 28, 2011  
Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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**I. Call to order and roll call.**

Chairperson Hur called the meeting to order at 2:00 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamieenne S. Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Charles L. Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Garrett Chatfield, Investigator.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney.

OTHERS PRESENT: Doug Shoemaker, Ray Hartz, Thomas Picarello, Diane Spaulding, John Stewart, Tim Colon, Chris Block, Anna Yee, Rita O'Flynn, Don Falk, David Pilpel, Charley Marsteller, and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Memorandum re: Request for Waiver from Post Employment Ban, dated June 7, 2011
- Letter from Doug Shoemaker in support of Request for Waiver, dated June 22, 2011

**II. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(c), the Commission should grant a waiver to Doug Shoemaker, the Director of the Mayor's Office of Housing, from the ban on compensation from contractors in San Francisco Campaign and Governmental Conduct Code section 3.234(a)(3).**

Executive Director St. Croix introduced the waiver request.

Doug Shoemaker stated that he accepted his position in the Mayor's office to advance the important work of affordable housing. He stated that he never used his position to seek other employment, and that he has a sincere desire to continue this type of work. He also stated that he has many roles as the Director, and that for some contract approvals he plays an active role and for others his role is ministerial. He stated that of the 175 contracts he signed in the last 12 months, five were for Mercy House. He stated that the affordable housing community is a very small and a specialized field. He stated that he would have the same conflict with any employer who worked with the City to obtain funding.

Commissioner Liu stated that she does not take waiver requests lightly, but there is a need to balance the purpose of the code and the right of an individual to pursue employment. She stated

that the code has a built in exemption for hardship and that Mr. Shoemaker meets the factors to grant the hardship exemption.

Commissioner Hayon stated that given the small field of employers, Mr. Shoemaker is unduly restricted in pursuing employment outside of government in this field. She stated that it is important to keep families in the City and that Mr. Shoemaker has met the conditions to grant a waiver.

Vice-Chairperson Studley stated that she agreed with Commissioner Liu regarding the need to balance the code against an individual's rights. She stated that the balancing test was considered by the voters when they voted to include a hardship waiver process in the law. She stated that the waiver process itself aids in vetting out whether or not there was any impropriety in seeking outside employment by a government official.

Chairperson Hur stated that it is important to consider how extreme the hardship must be before granting a waiver under that exemption. He stated that it is unclear what the dichotomy is between not granting the waiver and Mr. Shoemaker leaving the City to find employment.

#### Public Comment:

Ray Hartz stated that the Commission should not have scheduled this matter for a special meeting. He stated that the law exists to protect the residents of San Francisco. He stated that Mr. Shoemaker has the ability to garner support for his application. He stated that Mr. Shoemaker knew about the restriction when he accepted City employment and the waiver should be denied.

Thomas Picarello stated that the Commission should discuss the Grand Jury report at its next meeting. He stated that this situation is of the type the voters had in mind when it enacted the law. He stated that the Commission should deny the waiver request.

Diane Spaulding stated that she is part of an organization that represents affordable housing developers. She stated that the state is cutting redevelopment agency funding, which is the most used local source for affordable housing, so it is important to recruit leaders who understand the field. Ms. Spaulding also responded to Vice-Chairperson Studley, stating that there only about nine full-capacity non-profit affordable housing developers working in the City. She urged the Commission to approve the waiver.

John Stewart stated that his company builds affordable housing in the City and he has known Mr. Shoemaker for many years. He stated that the field is very specialized and it is likely that the best candidates to go into the non-profit sector would be those in government who understand the laws. He urged the Commission to approve the waiver.

Chris Block stated that he has been in the affordable housing community for over 20 years and that a very limited number of similar positions ever come available. He urged the Commission to approve the waiver.

Anna Yee stated that she was a native of San Francisco and an attorney. She stated that she came to support the waiver, and that Mr. Shoemaker did not ask her to come. She stated she also works in the affordable housing field and that Mercy House is a credible organization.

Rita O'Flynn stated that despite the emotional testimony in support of Mr. Shoemaker, he should not be exempt from the Charter requirement. She stated that Mr. Shoemaker has not proved an extreme hardship to qualify for the exemption. She stated that the exemption can only be granted by demonstrated facts. She stated that Mr. Shoemaker attempted to distance himself from his involvement in Mercy House contracts in his second letter in support of the waiver, and that because he approved those contracts the waiver should not be granted.

Don Falk stated that he is an affordable housing developer. He stated that every new mayor has appointed a new Director of Housing, so it is likely after the election Mr. Shoemaker will be removed from his position. He stated that executive level positions in the affordable housing community are very rare. He also stated that the loan granting process is very complex and goes through multiple layers of review.

David Pilpel stated that the Commission should have a discussion about the standards to grant an exemption outside of the context of any one applicant. He stated that given the past precedent applying the standards, the Commission should grant this waiver.

Charley Marsteller stated that the original ban on employment was for two years. He stated that Mr. Shoemaker has a high sense of integrity.

Vice-Chairperson Studley stated that she does not know Mr. Shoemaker, but that she works for an organization that advocates for affordable housing. She stated that she does know Ms. Spaulding. She also stated that the Commission should set a future agenda item regarding The application of the extreme hardship standard.

**Motion 11-28-06-01 (Ward/Hayon): Moved, seconded, and passed (4-1; Hur dissenting) that the Commission grant the waiver request.**

### **III. Adjournment.**

**Motion 11-28-06-2 (Hayon/Liu) Moved, seconded, and passed (5-0) that the Ethics Commission adjourn.**

#### Public Comment:

None.

Meeting adjourned at 2:52 PM.

Respectfully submitted,

---

Garrett Chatfield



Minutes of the Special Meeting of  
The San Francisco Ethics Commission  
June 28, 2011  
Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

GOVERNMENT  
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PUBLIC LIBRARY

**I. Call to order and roll call.**

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Executive Director St. Croix introduced the waiver request.

Doug Shoemaker stated that he accepted his position in the Mayor's office to advance the important work of affordable housing. He stated that he never used his position to seek other employment, and that he has a sincere desire to continue this type of work. He also stated that he has many roles as the Director, and that for some contract approvals he plays an active role and for others his role is ministerial. He stated that of the 175 contracts he signed in the last 12 months, five were for Mercy House. He stated that the affordable housing community is a very small and a specialized field. He stated that he would have the same conflict with any employer who worked with the City to obtain funding.

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Ray Hartz stated that the Commission should not have scheduled this matter for a special meeting. He stated that the law exists to protect the residents of San Francisco. He stated that Mr. Shoemaker has the ability to garner support for his application. He stated that Mr. Shoemaker knew about the restriction when he accepted City employment and the waiver should be denied.

Thomas Picarello stated that the Commission should discuss the Grand Jury report at its next meeting. He stated that this situation is of the type the voters had in mind when it enacted the law. He stated that the Commission should deny the waiver request.

Diane Spaulding stated that she is part of an organization that represents affordable housing developers. She stated that the state is cutting redevelopment agency funding, which is the most used local source for affordable housing, so it is important to recruit leaders who understand the field. Ms. Spaulding also responded to Vice-Chairperson Studley, stating that there only about nine full-capacity non-profit affordable housing developers working in the City. She urged the Commission to approve the waiver.

John Stewart stated that his company builds affordable housing in the City and he has known Mr. Shoemaker for many years. He stated that the field is very specialized and it is likely that the best candidates to go into the non-profit sector would be those in government who understand the laws. He urged the Commission to approve the waiver.

Chris Block stated that he has been in the affordable housing community for over 20 years and that a very limited number of similar positions ever come available. He urged the Commission to approve the waiver.



Anna Yee stated that she was a native of San Francisco and an attorney. She stated that she came to support the waiver, and that Mr. Shoemaker did not ask her to come. She stated she also works in the affordable housing field and that Mercy House is a credible organization.

Rita O'Flynn stated that despite the emotional testimony in support of Mr. Shoemaker, he should not be exempt from the Charter requirement. She stated that Mr. Shoemaker has not proved an extreme hardship to qualify for the exemption. She stated that the exemption can only be granted by demonstrated facts. She stated that Mr. Shoemaker attempted to distance himself from his involvement in Mercy House contracts in his second letter in support of the waiver, and that because he approved those contracts the waiver should not be granted.

Don Falk stated that he is an affordable housing developer. He stated that every new mayor has appointed a new Director of Housing, so it is likely after the election Mr. Shoemaker will be removed from his position. He stated that executive level positions in the affordable housing community are very rare. He also stated that the loan granting process is very complex and goes through multiple layers of review.

David Pilpel stated that the Commission should have a discussion about the standards to grant an exemption outside of the context of any one applicant. He stated that given the past precedent applying the standards, the Commission should grant this waiver.

Charley Marsteller stated that the original ban on employment was for two years. He stated that Mr. Shoemaker has a high sense of integrity.

Vice-Chairperson Studley stated that she does not know Mr. Shoemaker, but that she works for an organization that advocates for affordable housing. She stated that she does know Ms. Spaulding. She also stated that the Commission should set a future agenda item regarding The application of the extreme hardship standard.

**Motion 11-28-06-01 (Ward/Hayon): Moved, seconded, and passed (4-1; Hur dissenting) that the Commission grant the waiver request.**

### **III. Adjournment.**

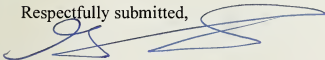
**Motion 11-28-06-2 (Hayon/Liu) Moved, seconded, and passed (5-0) that the Ethics Commission adjourn.**

#### Public Comment:

None.

Meeting adjourned at 2:52 PM.

Respectfully submitted,



Garrett Chatfield











